

1 IN THE UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF MISSOURI
3 WESTERN DIVISION

4 HALLMARK CARDS, INC.,)
5)
6 Plaintiff,)
7)
8 vs.) Case No.08-00840-CV-W-ODS
9)
10 MONITOR CLIPPER PARTNERS, LLC.,)
11)
12 et al.) November 5, 2012
13) Kansas City, Missouri
14 Defendants.)

15 TRANSCRIPT OF JURY TRIAL PROCEEDINGS
16 BEFORE THE HONORABLE ORTRIE D. SMITH
17 UNITED STATES SENIOR DISTRICT JUDGE

18 VOLUME 1 OF 10

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1 NOVEMBER 5, 2012 - DAY 1

2 (The following proceedings were had OUT OF THE
3 PRESENCE AND HEARING OF THE JURY:)

4 THE COURT: Good morning. Welcome back.

5 I take it everyone had a nice weekend with their
6 families.

7 Okay. Be seated.

8 The parties requested some time to take up some
9 issues, I think, relative to exhibits and perhaps opinions. I
10 have been through the trial briefs over the weekend and I have
11 reviewed the previous orders that have been issued throughout
12 the life of the case.

13 I'll begin by observing that some of the orders have
14 been I think misinterpreted or misapplied by the parties. It
15 is difficult, always difficult to rule objections to evidence
16 in the abstract. It is far better for me to hear the context
17 and understand the context of the exhibit before I rule the
18 objection. That said, I will allow the parties to make
19 whatever arguments they want to make this morning and to the
20 extent that I'm comfortable doing it, I will rule those
21 objections. To the extent that I'm not comfortable not doing
22 it, I'll simply defer the objection until the exhibit is
23 actually offered. So who would like to go?

24 MR. BLEGEN: Your Honor, we have four issues to
25 address this morning. Three relate to deposition designations,

1 housekeeping we need to clean up now so we can complete them.
2 And I have one relating to the opening statement of the
3 defendants that actually ties back to the trial brief. Would
4 you prefer the deposition issues?

5 THE COURT: You take them in whatever order you like.

6 MR. BLEGEN: All right. I'll start with deposition
7 issues. There is a dispute over a small amount of testimony in
8 the deposition of Mark Thomas. You have sustained an objection
9 to some testimony. I have a copy of the transcript if you want
10 to see it.

11 THE COURT: I do.

12 MR. BLEGEN: The testimony highlighted in yellow on
13 page 191 to 192, you had sustained an objection lodged by the
14 defendants that related to, I believe, speculation, personal
15 knowledge because --

16 THE COURT: Just a second.

17 All right. I'm sorry.

18 MR. BLEGEN: No problem, Your Honor.

19 THE COURT: Back up to the beginning.

20 MR. BLEGEN: Okay. You have in front of you a
21 snippet of the testimony of Mark Thomas. There is a section
22 designated, highlighted in yellow that was designated by the
23 plaintiffs on 191 and 192. It has to do with Exhibit 40. And
24 the testimony was objected to as being beyond his knowledge.
25 And as you read it through he does not recognize the document

1 he's asked questions about. At the time of that designation,
2 the defendants designated the following testimony in blue which
3 is continuing on speculating about that same document. Well,
4 you sustained the objection as to 191 and 192, the plaintiff
5 had, to the plaintiff's designation. The defendants now want
6 to keep their testimony which, frankly, falls under the same
7 objectionable issue and want to add in the testimony that is
8 highlighted in blue to the right on 191.

9 Our issue with that is that based upon your ruling
10 all of the testimony on those three pages should be excluded in
11 our view. At the very least you've told us we're not allowed
12 to play that section of testimony and they want us now to add
13 it back in to the designation.

14 THE COURT: Stacey?

15 MS. GILMAN: Your Honor, Dan and I had an e-mail
16 exchange on this over the weekend which I'd like to provide to
17 the Court.

18 I think this issue is much simpler than it may seem
19 at first glance. The plaintiff never objected to the testimony
20 on pages 192 and 193 that were designated by the defendant.
21 And they agreed in our e-mail exchange to include that
22 testimony. The only testimony that I understand they're
23 objecting to adding back in at this point is the testimony on
24 page 191 which is one Q and A, paren, question and answer
25 paren, that simply asks the witness to look at the exhibit and

1 acknowledge that he had it. That is necessary to provide
2 context to 192 and 193. We're aware that you've made it clear,
3 and we agree with you, these videos should be presented in a
4 manner that will not be confusing to jury. That question and
5 answer paren is necessary, we believe, in order to let the jury
6 know what exhibit is being discussed in the following testimony
7 whichever one you agree we can play for the jury.

8 THE COURT: Anything further?

9 MR. BLEGEN: Just to note that we didn't object to
10 their testimony because we didn't object to our testimony. We
11 think that entire part from 191 to 193 should be played. But
12 you sustained their objection and the testimony they want to
13 play is objectionable for the same reason. So for consistency
14 we ask it be stricken.

15 THE COURT: By striking the testimony offered by
16 plaintiff, I don't think that really added or detracted from
17 the case. Thomas doesn't know anything about the exhibit
18 portion designated by defendants, says he doesn't know anything
19 about the diary survey. I think that stands on its own. So I
20 will allow the defendants to play lines 10 through 15 on page
21 191 and then lines 20 through 24 on page 192 and 1 through 8 on
22 page 193.

23 MR. BLEGEN: Thank you, Your Honor.

24 The second issue on deposition designations has to do
25 with Bill Young. Mr. Young, we understood was going to be a

1 live witness when we designated his testimony in a belt and
2 suspenders fashion. He is not now a live witness. There is
3 about two minutes of testimony that we have requested to add
4 that just really puts into evidence two exhibits that have
5 already been stipulated as to admissibility but, they're
6 letters he wrote, they're the two offer letters, one from July,
7 one from September. I have a copy of the testimony we propose
8 to add that I can provide you.

9 You know, the history of the Bill Young deposition,
10 both sides designated and counter designated back in September
11 of the deadlines the Court set. After we were first told Bill
12 Young was likely not coming when the witness list was first
13 provided to the Court, the counter designations by the
14 defendants were significantly increased. They added a bunch of
15 testimony after the deadline for designated testimony. We did
16 not object to that in the interest of everybody not getting
17 along, not having a fight about it. We're not asking at this
18 point and I understand it was in the week before the trial
19 started to add a couple of minutes to merely put in two
20 exhibits that are coming in evidence any way. We just wish to
21 put them in by the person who signed them rather than putting
22 them in through somebody else and it may be confusing. We just
23 ask the Court's permission to add the testimony designated in
24 yellow.

25 There is some blue testimony that I highlighted.

1 That was their actual they already designated that. That is
2 coming in. Just to show that there is already testimony on
3 those topics that are coming into evidence.

4 THE COURT: Stacey?

5 MS. GILMAN: We advised the plaintiffs some weeks ago
6 that Mr. Young was not coming. And, in fact, it was always
7 known by the plaintiffs it was a question mark whether he would
8 be here. That's why we did designate testimony from him in the
9 course of the schedule that was set by the Court for deadline
10 for designation.

11 I'm not sure what testimony Mr. Blegen is referring
12 to that he is claiming that we added in. I don't believe we
13 have added in any other than in cooperation with plaintiffs, I
14 think he just said they don't have any objection to anything we
15 added. This is added testimony on the eve of trial that they
16 have no excuse for not having identified earlier. It is far
17 too late and we object to it being added.

18 I will note for the Court that is the added testimony
19 that we found in the designations going back through them.
20 I've asked Mr. Blegen whether there is more in the e-mail
21 exchange. I never heard back. I don't even know if that's the
22 only added testimony. But just as Your Honor said on Friday,
23 nothing new should be thrown out at trial. We believe that the
24 designation has been hashed out ad nauseam and should not be
25 added to at this late date.

1 MR. BLEGEN: Your Honor, this was transmitted last
2 Tuesday in the cover e-mail. I noted to Ms. Gilman that, in
3 fact, we did add some testimony. The pleading that was
4 provided was red lined to show exactly what we added. So this
5 idea that we're hiding additional testimony is inappropriate
6 but there is no prejudice here. They've had it for a week.
7 We've asked them for any response. If they wished to counter
8 designate something for context, they're welcome to do so.
9 We'd like to be able just to put those two exhibits in through
10 them.

11 THE COURT: I'll allow it.

12 MR. BLEGEN: Thank you, Your Honor.

13 Do you mind if I take these back so my paralegal
14 knows what we're doing?

15 The final deposition related issue, evidentiary
16 related issue relates to Jan Murley. First, I want to start
17 off by apologizing to the Court. Upon receiving the order
18 related to Jan Murley last week I went back and reviewed our
19 jury instructions and we did, in fact, create confusion that
20 was unintended in defining trade secrets to include the Murley
21 materials. Which then as I re-read it carries through to the
22 verdict director that makes it appear that we're asking the
23 jury to award damages as defined with regard to the Murley
24 materials. That was not our intent. Those are not part of the
25 damage claim. We have been and are only seeking damages as to

1 the five presentations that make up what has been referred to
2 as Exhibit 20. So I apologize to the Court for the confusion
3 that has caused.

4 With that said, the evidence that we have designated
5 in depositions and intend to put on at trial related to Murley
6 goes to many, many issues in the case, most of which are
7 necessitated by the defendant's arguments and the evidence they
8 intend to put on about Hallmark's trade secrets. What we need
9 to address is what impact, if any, the Court's order on the
10 claim regarding Jan Murley would have on the testimony in the
11 case. The Court indicated it may, in the order, but we want to
12 clarify and have an opportunity to address that because we
13 don't believe it should, because none of the evidence was
14 intended to support a claim for damages with regard to Jan
15 Murley.

16 In fact, the evidence related to the 2006 to 2007
17 time period, the hiring of Jan Murley, the hiring of nxtMove,
18 the chain of events that occurred during there goes to a
19 variety of issues. The defendants argue that they never used
20 any Hallmark trade secrets, never would have used any Hallmark
21 trade secrets. Well, what Jan Murley brought to the table was
22 largely, it was derived completely from, almost completely from
23 the Exhibit 20 trade secrets. And we'll prove at trial, in
24 fact, the information she's providing in 2006 for use by RPG is
25 the same information stolen in 2005. So it goes to the issue

1 of whether it was used and useful. They argue it's not useful.
2 They argue it's old and stale. They argue this has no
3 relevance to RPG. Well, in fact, a year after the acquisition
4 they're continuing to use that same information.

5 The individual from nxtMove will testify that that
6 information provided by Jan Murley was the base line on the
7 industry that nxtMove is able to use in 2006 to move forward
8 and do research on just the humor segment that RPG was using.
9 So this is very useful, very interesting information. It was,
10 in fact, transmitted directly from Monitor Clipper to RPG. She
11 provided it to Monitor Clipper. They forwarded it on to RPG,
12 which is a direct violation of the confidential agreement that
13 they're claiming that bars us from bringing this action.

14 Just like to note, too, that Jan Murley, her role, we
15 learned about that in early 2009 after the original complaint.
16 At that point in time, if you'll recall, the case was stayed
17 for a period of a year. When we filed the first amended
18 complaint we discussed in detail the very evidence we're
19 intending to put on at trial about Jan Murley and her role in
20 the process. It has been a subject of discovery. The
21 depositions you refer to in the order as having occurred before
22 the April 23 hearing were only taken because of the very Jan
23 Murley evidence that we're talking about. So this isn't new
24 information.

25 Now the damage claim on Murley is another situation

1 but we're not seeking that. But there are a variety of other
2 reasons. It goes to the counterclaim. It goes to the cover
3 up. Spoliation. Much of the spoliation evidence is relevant
4 or is in context because of the events with Jan Murley. Paul
5 Maxwell, who ran Shredder, was the primary contact with Jan
6 Murley and nxtMove. So that evidence is extraordinarily
7 relevant to all the other issues in the case. So with that and
8 with our apologies for our jury instructions which were
9 confusing and that is our fault, I apologize for that, we'd ask
10 that the Court allow us to put on the evidence related to Jan
11 Murley, related to nxtMove, which you've already reviewed in
12 the course of the deposition objections. And we made the
13 argument in the trial brief as to the relevance of it. We
14 would ask we be allowed to put that evidence on, knowing that
15 we're not actually seeking a claim with regard to the Murley
16 evidence.

17 MS. GILMAN: Your Honor, what Mr. Blegen has just
18 asked the Court is essentially to reconsider its order. In the
19 e-mail that I handed to you a moment ago, if you look at page 4
20 Mr. Blegen told us on Friday that they were not going to make
21 any amendments to their deposition designations,
22 notwithstanding your order because they were still evaluating
23 it and, in fact, needed clarification from this Court about
24 what the order meant.

25 We asked Mr. Blegen to explain what clarification he

1 believed was necessary. The plaintiff declined to tell us what
2 their position was on the order. So this is the first we're
3 hearing of a request to start from scratch and reconsider your
4 order.

5 With that said, as we think the Court's order
6 correctly reflects, these supposed trade secrets that relate to
7 Ms. Murley much later are entirely distinct from the trade
8 secrets that are claimed at issue in this case with respect to
9 these defendants. And all of plaintiff's filings up to this
10 point have claims that these acts of alleged spoliation, the
11 supposed image and purge of the computer, Mr. Maxwell's running
12 a shredder, that all of those actions related to Ms. Murley's
13 use of the trade secrets that you've said are not at issue in
14 this case. In fact, in their motion for sanctions, they
15 specifically made the argument that Monitor Clipper's counsel,
16 Weil, became involved in issues related to Murley in January of
17 2007 after RPG's Chief Financial Officer Ed Stassen raised
18 concerns to Maxwell and other Monitor Clipper employees about
19 Murley sharing confidential Hallmark information with Monitor
20 Clipper and RPG. As a result of sharing confidential Hallmark
21 information, Monitor Clipper took two steps relevant to the
22 present motion. The first that they identified was the
23 renegotiating of the nxtMove contract which Your Honor has
24 already expressly said in the order relates to all this new
25 information that is not relevant to this suit. The second was

1 they claimed that Clipper hired a computer forensics firm to
2 make images of the computers used by the persons who received
3 Murley's dissemination at Hallmark. It goes on the same way.

4 Their claim has always been that that conduct was
5 designed to conceal the use and dissemination by Murley of
6 those later trade secrets which she was supposedly retained
7 from Hallmark. There is no connection in the evidence in this
8 case between the trade secrets that they're claiming these
9 defendants misappropriated as those later trade secrets.

10 Similarly, with respect to Mr. Maxwell in the
11 response brief that they filed just recently regarding our
12 objections to deposition designations they said at page 3, the
13 evidence that Paul Maxwell, a Clipper employee, was actively
14 engaged with Murley and nxtMove, ran the Shredder program in
15 January of 2007 to destroy evidence on his computer the day
16 before it was to be imaged also provides strong evidence that
17 the defendants knew their acquisition and use of Murley
18 material was improper. All of this goes to the Murley material
19 that Your Honor has correctly said are not the trade secrets
20 that are at issue in this case. It's highly prejudicial for
21 this all to come in. And also, frankly, prejudicial for them
22 to come in this morning and seek reconsideration after refusing
23 to even tell us what their position was on this.

24 MR. BLEGEN: Your Honor, first off, if you choose to
25 read the e-mail string, I don't have it in front of me, I can't

1 remember exactly what was said. We had conversations in the
2 courtroom after you left Friday. We had e-mail exchanges.
3 Clearly their position is your order means nothing from 2006
4 and 2007 ever comes in the case. They told us they believe
5 your order impacts every deposition designation in the case.
6 We believe that as we explained earlier there has been
7 confusion caused by us in that the information, in fact, the
8 very nxtMove and Murley contract negotiation that you noted in
9 your order was being kind of thrown in as an issue that was
10 potentially not coming in because of confusion caused by our
11 jury instructions.

12 Now, that information, as I said earlier, the
13 information Jan Murley transmitted to Monitor Clipper, Monitor
14 Clipper transmitted to RPG was from Hallmark materials. It was
15 the same Hallmark material that they stole in 2005. It was, so
16 it is, it's not a completely separate set of information but
17 we're not seeking damages on that. It does show that the
18 information stolen from us in 2005 was still relevant and
19 useful. And, in fact, used by them.

20 As far as the destruction of evidence, they stole
21 trade secrets. Hallmark sent a letter saying to Monitor and
22 Monitor Clipper received it saying, I certainly hope you're not
23 using our information that you had from the BMR. They then set
24 upon trying to use Monitor, so Monitor finds nxtMove. Monitor
25 Clipper works with nxtMove to do the same thing for Hallmark.

1 They bring in Jan Murley to do what they, what Hallmark said
2 you better not be doing. It goes to their intent. It goes to
3 the bad acts. And all of that culminated after there was a
4 complaint by RPG's CFO where he looked at the documents and
5 said, these should sure look like they're from Hallmark. They
6 did the image and purge. They were trying to make sure none of
7 that remained at RPG and so they imaged the computers. The
8 problem is right before they did that, Paul Maxwell, the
9 Monitor Clipper employee, ran Shredder on his computer. We
10 have no idea what all was lost. Jan Murley deleted documents
11 from her computer right before it was imaged. All of that goes
12 to the bad acts of Monitor Clipper and their attempts to cover
13 up what they had done.

14 The contract was renegotiated. I believe Ms. Gilman
15 said it was the nxtMove contract. In fact, it was Jan Murley's
16 contract where clauses were inserted by Paul Maxwell, that make
17 specific false representations about whether she had had
18 materials from the former employer in her consulting with RPG
19 work. That is the kind of evidence that is coming in. We're
20 not seeking damages with regard to what Murley brought in 2007.
21 In fact, we will be able to tie the very information in there
22 to the same information as at issue in the case just to show
23 that, in fact, it was the same information used in 2006.

24 As far as surprise, all of this was coming in until
25 everyone received your order. In your deposition objection

1 order all of this was approved to come in and their objections
2 were overruled. So it's really a question on Thursday we
3 received the order. On Friday both sides had an idea of what
4 that may impact and neither side was particularly forthcoming
5 with exactly what the impact -- Their request was, well, what
6 are you going to voluntarily delete from your designations
7 today because of the order? Our position was, well, I'm not
8 sure what the scope of the order is so we need to take it up
9 with the Court. We thought we might do it Friday but you
10 indicated you would rather do it this morning. We're here this
11 morning. And there is no prejudice. There is no surprise. We
12 just need clarification because as you can tell the sides do
13 not agree on the scope and impact of your order.

14 THE COURT: Let me -- Go ahead.

15 MS. GILMAN: Your Honor, this argument that these
16 Murley materials tie back to the trade secret presentations
17 that are at issue in this case is entirely new and has never
18 before been advanced by the plaintiff in this case. And there
19 is absolutely no connection between the Power Points and the
20 Murley materials or the information contained in those.

21 I guess I don't want to repeat everything that I've
22 already said because I think the Court is well aware but all of
23 the alleged concealment, spoliation, that all goes to what
24 Ms. Murley and others did with respect to the Murley materials.
25 And what might have been destroyed to cover up that conduct,

1 not the conduct at issue with the trade secrets that are at
2 issue in this case.

3 MR. BLEGEN: Not to be belabor the point but on that
4 final point, Your Honor, we have no idea what Paul Maxwell
5 deleted. He arrived on the scene in September of 2005 in the
6 middle of due diligence, was involved in the acquisition. In
7 January 2007, knowing his computer is going to be imaged, he
8 ran a document wiping tool that erased all evidence of what was
9 there. The only time he ran it is the day before his computer
10 is going to be imaged. It may have been the Murley materials.
11 It may have been things he was keeping in his possession from
12 the original contract. Mr. Maxwell will be here to explain if
13 he can what he was erasing. But that evidence clearly goes
14 beyond any question --

15 THE COURT: It has been my practice and I'm sure the
16 parties are aware of it, that I try to make rulings that allow
17 both sides to fairly present their theory of the case to the
18 jury. In indicating that I would not submit a damage
19 instruction for trade secrets misappropriated by Murley it was
20 not my intention to exclude any testimony or evidence related
21 to Murley.

22 To the extent that Murley's activities can be linked
23 to the five presentations which were shown in Exhibit, I think
24 it's 40, might have been Exhibit 20 at the April hearing. But
25 in any event, to the extent that her activities involved use of

1 those materials, I think pretty clearly that testimony, that
2 evidence would be admissible.

3 To the extent that the plaintiff intends to offer
4 evidence of new trade secrets or misappropriation of trade
5 secrets that are not a part of those five presentations, that's
6 excluded. So I don't think there is any way you can try this
7 case without some reference to Jan Murley. As long as the
8 defendant denies that the presentations derived independent
9 economic value, I think their use at a later date tends to
10 refute that and is therefore relevant. To the extent that it's
11 plaintiff's position that the defendant destroyed evidence
12 carries the day, I think evidence of that destruction is
13 necessary and should be admitted.

14 I hope that gives the parties some guidance. Again,
15 it's difficult to rule these things in the abstract. I have to
16 know what the context of the evidence is and what the context
17 of the exhibits are before I can make those rulings definitive
18 but I hope that gives you the direction you need.

19 MR. BLEGEN: Thank you, Your Honor.

20 The one final issue the defendants have today, you
21 indicated you had read the trial briefs so you may have seen
22 this yourself. There is an argument for, in the trial brief
23 submitted by the defendants that they intend to argue that the,
24 argue the fact of lost profits as having an impact, the fact of
25 not having lost profits having an impact on the trade secrets

1 on the damages on your evidence. Respectfully we raised this
2 exact issue pretty much. You gave a very clear and distinct
3 order that no evidence regarding Hallmark's lost profits or
4 lack of lost profits was going to be admissible because it's
5 not going to be given with the case and could confuse the jury.
6 In defiance of that the defendants indicate they intend to make
7 that very exact argument that you excluded in their opening
8 statement here this morning. We would ask that you make clear
9 that your order stands and that they're not allowed to make
10 those arguments in their opening statement.

11 MR. MANCHEL: Good morning, Your Honor.

12 THE COURT: Good morning.

13 MR. MANCHEL: The reason that we presented this issue
14 to the Court in advance is so there would be no surprise and no
15 confusion. And it touches on what the Court just spoke to
16 which is the independent value supposedly of the presentation
17 trade secrets at issue.

18 We anticipate that Hallmark will say that they were
19 valuable. We anticipate that Hallmark will say the value is
20 lost if made secret.

21 THE COURT: Made public?

22 MR. MANCHEL: Made public. I'm sorry. We're not
23 going to present to the jury the notion that there was no claim
24 for lost profits. But we believe we should be entitled to
25 present to the jury that Hallmark claims they're valuable

1 because they're secret. Hallmark's claims they were taken by
2 the defendants and used by the defendants and as a result are
3 no longer secret. And we have testimony from Hallmark's
4 30(b)(6) witness and from Dr. Serwin in his expert capacity
5 that there is no dollar value that Hallmark has ascribed to
6 these trade secrets and there is no diminution in value and
7 that he is aware of no lost profits. Our argument to the jury
8 both through witnesses and ultimately in closing will be
9 Hallmark's claim is impossible if the value comes from the
10 secrecy. If the value's supposedly lost because it was
11 disclosed by the defendants, how is it possible that, according
12 to their damages expert and their 30(b)(6) witness on damages,
13 there's been no diminution in value. They've never calculated
14 the dollar value of these trade secrets. And there's been no
15 lost value or lost profits that they're aware of in any way,
16 shape or form. The fact that they chose not to bring a lost
17 profit claim cut us off from taking discovery on the issue of
18 whether, in fact, there were lost profits. But we have sworn
19 testimony from their 30(b)(6) witness and their expert saying
20 they're aware of no losses, no lost profits arising out of the
21 use by the defendants of these trade secrets. Thank you, Your
22 Honor.

23 MR. BLEGEN: Your Honor, that argument is exactly
24 what was made in opposition to the motion in limine and it was
25 rejected. You cited the American Family Mutual Insurance case

1 in which the product was never even brought to market. There
2 was no evidence, couldn't have been lost profits because there
3 had been no use in the market place and that lack of lost
4 profits was deemed irrelevant and excluded in that case.

5 You specifically indicate that they are precluded
6 from presenting evidence or arguments to the effect that we did
7 not suffer lost profits. They argue that there is no evidence
8 we did lose but there's also no evidence that we did not have
9 lost profits. In fact, if this is allowed to proceed I'm sure
10 Mr. Hall, this morning, would be happy to explain to the jury
11 the ways in which we could certainly have lost profits by their
12 use. But that is our understanding that evidence is not in the
13 case. It was very explicitly excluded in the motions in limine
14 process on the very usage of that evidence that is being
15 proposed for the opening statement today.

16 THE COURT: The order in limine says that the Court
17 rejects defendant's argument that the lack of lost profits is
18 relevant to the issue of whether the information is a trade
19 secret. Although value to a business is a factor in
20 determining whether information is a trade secret, this does
21 not mean the information must be specifically relatable to
22 measurable profits to be a trade secret. I cite the American
23 Family case and say that it does not hold the absence of lost
24 profits means the information lacks value. To the contrary,
25 the absence of such evidence could mean many things, most of

1 which have nothing to do with the information's value.

2 Plaintiffs request to bar this line of evidence and argument is
3 granted. I adhere to that ruling and the defendant will be
4 prohibited from mentioning it in opening statement.

5 MR. DONOVAN: Your Honor, I just want clarification
6 on that.

7 THE COURT: Okay. Let me clarify something. When
8 one attorney speaks to an issue that attorney carries the day
9 on that issue. I don't want you jumping up and down and double
10 teaming me up here. I have enough trouble with one lawyer at a
11 time.

12 MR. MANCHEL: May I, Your Honor?

13 THE COURT: Yes.

14 MR. MANCHEL: We anticipate that a witness this
15 morning for Hallmark, Wayne Strickland, will be testifying
16 about the value of the trade secrets of Hallmark to a potential
17 competitor. Now, again, I really am looking at this from a
18 different issue than the whether it is a trade secret. I
19 understand the Court's ruling. I'm not speaking to that. If
20 they speak about the value to competitors, the issue he's going
21 to present is the value is lost if it's presented to a
22 competitor. We ought to be able to cross-examine
23 Mr. Strickland and show that, in fact, there was no value lost
24 even though they claim this was shown to a competitor. So it
25 doesn't really go to the existence of the trade secret and

1 whether it's a trade secret, we're conceding that issue. It
2 goes to whether the value of a trade secret was destroyed which
3 is their claim. The claim is if this is shown to a competitor
4 it would have value to the competitor and the value to Hallmark
5 would be lost. And that's the issue that we're anticipating to
6 be able to cross-examine this witness on.

7 MR. BLEGEN: Well, at this point in time I can't
8 speak definitively as to what Mr. Strickland will testify to
9 today. But I will say that is a different issue than lost
10 profits and to cross-examine him on whether or not Hallmark
11 lost profits, having to do with whether the trade secrets have
12 value to Hallmark, what had value to RPG. I'm confident that
13 the plaintiffs in the American Family case believed that their
14 trade secrets had value and would lose value if they were used
15 by the competitor who stole them, even though that competitor
16 never effectively used them and there were no profits lost. So
17 and that Court very clearly had said the issue of lost profits
18 would not come in. So I'm not sure at this point in time
19 whether that issue is going to come up, how it's going to come
20 up, what the impact of lost profits would be. But I don't
21 believe the issue of whether or not Hallmark lost profits would
22 be relevant to that line of questioning if it were to occur.

23 THE COURT: I'm not sure that I understand what the
24 intended cross-examination of Mr. Strickland will be. What I'm
25 saying is that questions concerning whether Hallmark lost

1 profits as a result of the alleged misappropriation of trade
2 secrets is not an issue in the case.

3 Now, I don't know how you want to parse that. I
4 don't know how that applies to Strickland. Do your
5 cross-examination. If you think it's objectionable, object,
6 and I'll rule it in context.

7 MR. BLEGEN: Thank you. That's all that we have to
8 raise this morning.

9 MS. GILMAN: Your Honor, pursuant to the Court's
10 scheduling order the parties have been exchanging demonstrative
11 exhibits that are planned to be used in opening, by and large,
12 by agreement. However there are two exhibits that plaintiff
13 proposes to use as demonstrative in their opening argument.

14 THE COURT: Opening statement?

15 MS. GILMAN: I'm sorry. Opening statement. Thank
16 you. Well, I'm anticipating what it might be.

17 THE COURT: I'm sure it won't be.

18 MS. GILMAN: I'm sure you are right. Thank you.

19 And issues have arisen with respect to these two
20 demonstratives and I will provide copies to the Court of the
21 two that were provided to us.

22 First on the time line that I've provided to the
23 Court, in January on that time line there are two bullet items
24 Clipper coordinated computer sweep and Maxwell runs Shredder.
25 We originally had one objection to use of the term computer

1 sweep. They have agreed to change that to image and purge, I
2 believe. But the remaining issue is the one that we've just
3 discussed with the Court with respect to the Murley materials.
4 And I respect the Court's order on that. And I understand the
5 plaintiff's position now is that those Murley materials in some
6 fashion later derived from Exhibit 20 however we do not believe
7 that the evidence will show that any evidence will come in in
8 this case to support a connection between Exhibit 20 and the
9 Murley materials. And therefore with the -- this is an
10 improper topic to be covered and displayed to the jury in the
11 opening statement. If the Court is going to allow them to put
12 in evidence, that needs to come in through the case. Again,
13 they've never made the argument before today that those Murley
14 materials are tied in some way to the presentation of the trade
15 secrets that are at issue here. And therefore we object to
16 that item being included on the time line and we ask that it be
17 removed.

18 THE COURT: The second exhibit?

19 MS. GILMAN: The second exhibit purports to represent
20 I suppose the structure of the companies and we objected to
21 this as misleading. Among other reasons because it suggests
22 that Monitor Clipper Partners was the owner of Recycled Paper
23 Greetings which was simply not the case. At best Monitor
24 Clipper Partners was one of more than 90 entities that held
25 indirect ownership in effect having 1.4 percent stake at that

1 level. And this notion that Monitor Clipper was the entity
2 that acquired RPG, again, that's a brand new argument in the
3 case. In fact, this Court will recall that the plaintiff has
4 been arguing for joint and several liability all along which
5 would be inconsistent. If they're the owner, you don't need to
6 make those arguments. And we think this misrepresents what the
7 structure was and would be improper to show to the jury.

8 I'm cognizant of your admonition that only one
9 counsel should speak to each issue. This relates to some other
10 overarching issues that we think are likely to come up in the
11 opening that Mr. Manchel has planned to speak to. I don't know
12 whether the Court will hear from him on that.

13 THE COURT: Let's start out the right way. Go ahead
14 and finish the argument.

15 MS. GILMAN: So therefore which have objected to the
16 use of this slide. In addition to the problem of the ownership
17 between Monitor Clipper and RPG, which is contrary to the
18 evidence in this case, it also shows this line from Monitor
19 Group going into Fund II, which we, frankly, don't even
20 understand why that is there. There is no evidence that would
21 show that connection and we think this would be a
22 misrepresentation not supported by the evidence and should not
23 be shown to the jury.

24 MR. AISENBREY: Good morning, Your Honor. Turning to
25 the time line first. This is a time line we want to use, what

1 we expect the evidence to show. As I understood Your Honor's
2 order on Friday that if we expect the evidence to show
3 something and it doesn't show it, the jury will make us pay for
4 that at closing. I think we will be able to put in the
5 evidence of the image and purge. I think the Shredder evidence
6 is something to talk about. So I think it's fair game.

7 With respect to the structure, I don't know how this
8 implies that Monitor Clipper owns Recycled Paper. In fact, I
9 propose to use this to explain the complex of the companies
10 that were created so the jury will have an understanding of
11 what fits where. I think they're going to have one somewhat
12 similar. It stops at Fund II and goes down. It doesn't have
13 what is above Fund II. It doesn't have the fact that Fund II's
14 general partner is abbreviation Clipper 2 Limited Partners
15 whose general partner is Clipper general partners who, in fact,
16 are all the Clipper people.

17 So I think this helps me explain it to the jury just
18 so they get an idea who the players are. I don't think it
19 misstates anything. It certainly doesn't show that Monitor
20 Clipper owns Recycled Paper. It does indicate that they had a
21 corporate services agreement with Recycled Paper which I think
22 was worth several million dollars to Monitor Clipper Partners.

23 THE COURT: What is the interest in Monitor Group and
24 Fund II?

25 MR. AISENBREY: I was about to tell you that, Your

1 Honor. I think Monitor Group has an interest in Fund II. They
2 are among the investors. I think they do it through a trust
3 but, in fact, Monitor Group, I believe the evidence will be
4 owns part of Fund II. They're one of the investors.

5 THE COURT: Do you have evidence?

6 MR. AISENBREY: I believe we do.

7 THE COURT: I'll allow the plaintiffs to use both
8 those exhibits in opening statement.

9 MR. MANCHEL: Thank you, Your Honor.

10 I thought I would take a shot and see if we can
11 resolve some issues that I'm concerned are going to come up in
12 opening argument.

13 THE COURT: Statement?

14 MR. MANCHEL: Opening statement.

15 MR. AISENBREY: I'm worried about how the defense
16 thinks this.

17 MR. MANCHEL: From our perspective, Your Honor, I'd
18 like to avoid two things. I really don't like to interrupt
19 opposing counsel's discussion. I think there are several
20 issues that I'm almost virtually certain will be raised. I
21 think they go directly to the warning that Your Honor gave on
22 Friday in terms of both, nothing being new and warning the
23 plaintiff about the possibility of a mistrial. I don't know if
24 it's something Your Honor would like to address now. I don't
25 know if we can agree whether or to what extent they're coming

1 in but I thought I'd raise these issues.

2 The first set of issues at this moment given the
3 Court's rulings, I would ask for a continuing objection during
4 discovery, I'm sorry, during opening statement, having to do
5 with Maxwell's Shredder, the Murley materials and nxtMove. I
6 understand the Court's ruling but just so the record is clear,
7 the Maxwell Shredder testimony has been offered and argued
8 solely and exclusively as regards Exhibit 20A through E,
9 period. And Your Honor has made it clear that if that is going
10 to be offered for the purpose of showing some use of Exhibit 20
11 which are trade secrets at issue in this case, it may come in.

12 I want to state for the record I will not object
13 during the opening but I want the record to be very clear that
14 as regards Murley, nxtMove and Maxwell, all evidence that will
15 be presented, all argument that has been made goes solely and
16 exclusively to the supposed use of Exhibits 20A through E, the
17 destruction supposedly of Exhibits 20A through E, and the
18 imaging of computers as a result Exhibits 20A through E, so I
19 ask please to have a continuing objection during opening
20 statements.

21 THE COURT: That is certainly my intention. I'll
22 show your objection as continuing.

23 MR. MANCHEL: Thank you, Your Honor.

24 There are three damage numbers that we anticipate
25 will be raised during opening by the plaintiffs. The unjust

1 enrichment in terms of financial gains, the unjust enrichment
2 in terms of avoided cost, and the two reasonable royalty
3 figures. We object, to be clear, and Your Honor I'll make the
4 objection during opening, we object to the jury being told the
5 number and we object to the jury being told any basis for the
6 number.

7 The objection will be that the number and the basis
8 will be based on information that this Court has ruled as
9 inadmissible. It will be a statement made in opening that
10 cannot as a matter of law be proven during trial given this
11 Court's rulings. It will be based on information that is not
12 relevant. And as regards Dr. Serwin, he will be offering the
13 expert opinion and that's the basis for the opening remarks.
14 It will violate Federal Rules of Evidence 703 and 705 insofar
15 as it will be based on an opinion that is not supported by any
16 facts in the case.

17 I want to be very clear about this because we just
18 touched on it. This notion that came up last week, literally,
19 that Clipper owned or controlled RPG is new. I believe it's
20 being raised at this point to deal with the Court's rulings on
21 the joint and several liability issue because during discovery,
22 during expert opinion exchanges and all depositions, the sole
23 and exclusive reason offered by the plaintiff for both the
24 number and the basis for the number is the sole reason that
25 this Court knocked out which is these figures would be paid by

1 the beneficial owners of the profit and revenue stream.

2 As regards avoided costs, the testimony which has
3 been struck by this Court is it didn't matter who avoided the
4 costs. Anybody along any of these legal entities that avoided
5 the costs, the defendants are liable.

6 As regard the revenue, the exact same argument was
7 made. Any revenue that was realized by any legal entity along
8 any of this ownership structure is owned by the defendants.

9 The reasonable royalty numbers that came flat out and
10 said this is what others would pay. Period.

11 So we're in a position now that if they say during
12 opening to the jury the reason you should award these figures
13 to the plaintiff is because Clipper really owned RPG, or some
14 type of argument that you just heard touched on that is going
15 to try to collapse the entities, not only is that a brand new
16 argument, not only does it run counter to the stipulations that
17 were presented to this Court in connection with the summary
18 judgment motion but for us, substantively, it is literally
19 brand new. There will be no witness that they can put forward,
20 not Dr. Serwin in his expert capacity and not Dr. Serwin in his
21 30(b)(6) witness capacity that has or will testify along those
22 lines. We think it would be inappropriate and prejudicial.
23 And if it was offered during opening, I would have to object.
24 I understand I don't know exactly what will be said but I want
25 the Court to know I would have to object and that I would move

1 for a mistrial because of how prejudicial it is.

2 It is a clean sweep away as Stacey just said. Think
3 about it for a moment intellectually. All we've ever heard is
4 joint and several. If they had an alternate argument that my
5 client should pay damages because my client really owned
6 Clipper, that should have been presented last March or last
7 April. Thank you, Your Honor.

8 MR. AISENBREY: Your Honor, I think I can be brief on
9 this. We disagree with Mr. Manchel's points just made but the
10 fact is in opening statement I intend to refer to millions of
11 dollars, nothing more. That's it. No explanation of why or
12 how or who owns what or unjust enrichment or reasonable royalty
13 or Dr. Serwin or anything else. So I think this is really
14 moot.

15 I do believe we will go into, as I said, the complex
16 organizational structure. I think the evidence will show that
17 Clipper benefited to the tune, the kind of money we asked for
18 in this case.

19 THE COURT: All right. I'll show the defendant's
20 objection as continuing through the opening statement.

21 For the record, if the objection were made during the
22 opening statement, I would overrule. And if a motion for
23 mistrial is made at that stage, I would overrule a motion for
24 mistrial.

25 Let's take, oh, about 5 minutes to get comfortable.

1 Actually that clock is a little slow. Let's take about 5
2 minutes. It's fast.

3 MR. BLEGEN: Your Honor, very, very briefly. I meant
4 to do this earlier. I actually have an alternative instruction
5 on the trade secrets to provide to the Court.

6 THE COURT: Just give it to Steve, please.

7 MR. AISENBREY: Your Honor, could we have our
8 assistants set up the computer to use?

9 THE COURT: Yes. And I was looking at the clock on
10 the back wall. It is actually about 19 minutes after the hour.
11 We'll start at 8:30, as soon as all the jury is here. We'll be
12 in recess.

13 Just for your information we are missing one juror.
14 Eva is checking to see if the juror left a message. Traffic
15 was snarled in the Northland this morning.

16 There was a message from juror, I think it's number
17 3, who had indicated she had gotten turned around but is nearby
18 so we should be ready in a moment.

19 (The following proceedings were had IN THE PRESENCE
20 AND HEARING OF THE JURY:)

21 THE COURT: Please be seated. Welcome back, ladies
22 and gentleman.

23 I am going to begin by reading a series of general
24 instructions to you. Following that you will hear the opening
25 statements by the attorneys. And after that the plaintiff will

1 commence its presentation of evidence.

2 (Instructions Nos. 1 through 6 were read by the
3 Court.)

4 THE COURT: Is the plaintiff ready to present opening
5 statement?

6 MR. AISENBREY: We are, Your Honor.

7 May it please the Court?

8 THE COURT: Go ahead.

9 MR. AISENBREY: Good morning, ladies and gentleman.

10 As you learned on Friday, my name is John Aisenbrey.
11 And together with Charlie German and Dan Blegen we represent
12 Hallmark Cards.

13 The case we're here about is a case about stealing
14 property. The property in question is trade secrets, which are
15 information a business uses to its advantage, how it proceeds
16 and works in the market place.

17 The defendant, Monitor Clipper, manages a fund you'll
18 hear called Fund II. And with the money from that Fund II it
19 buys and sells companies. What this case is about is in 2005
20 Fund II, with Monitor Clipper managing it, saw an opportunity
21 to purchase Recycled Paper Greetings, which was then the third
22 largest greeting card company in the United States.

23 And Monitor Clipper, people you'll meet, knew that a
24 consulting firm called Monitoring Consulting or Monitor Group
25 had done extensive work a few years before for Hallmark Cards.

1 So they were interested in the issue of potentially buying
2 Recycled Paper. And, in fact, what they did was, you will
3 hear, is go about methodically trying to get whatever
4 information the consulting firm had about Hallmark to evaluate
5 and manage Recycled Paper.

6 This case is about how they succeeded in doing that,
7 then how they bragged about it internally and even to lenders
8 that they approached to help buy the company.

9 And when Hallmark questioned the purchase of Recycled
10 Paper by a group Monitor Clipper was involved with, they lied
11 about it and tried to cover it up by destroying evidence. So
12 when the case is over, we'll be asking you for a substantial
13 amount of damages.

14 What I want to talk to you about this morning is how
15 they did it, how they stole the trade secrets and how they
16 covered them up.

17 The people involved, I'll use the Power Point here a
18 little bit to give you some -- so you don't have to look at me
19 all the time. Just a welcome relief, I'm sure. Monitor
20 Clipper Partners, there are four people whose names will come
21 up. One of them is present in the courtroom. Adam Doctoroff
22 is a defendant, Peter Kim, Paul Maxwell and Charles Yoon.
23 We'll be talking about them. At the time they were all
24 principals or employees of Monitor Clipper.

25 Now, I told you that Monitor Clipper looks for

1 companies where they can use the expertise of Monitor
2 Consulting. And Monitor Consulting, you'll hear the names and
3 hear some testimony from Steve Levin, Mark Pocharski, Stacey
4 Raiche and Juanita Moore.

5 Now, these two companies are affiliated with one
6 another through common governance. Mark Thomas, Bill Young and
7 a man named Bob Calhoun were all on the governing committees of
8 Monitor Clipper Partners and the governing committees of
9 Monitor Consulting.

10 Finally, the last set of players, something called
11 the Monitor standing case team. These are employees of Monitor
12 who are dedicated 100 percent to work for Monitor Clipper. In
13 fact, you'll see the contract that says the case team to
14 exclusively serve Monitor Clipper Partners for the 2005
15 calendar year by which Monitor team is dedicated 100 percent to
16 Monitor Clipper. The team is to be considered flexible
17 resource that Monitor can put to the use wherever it sees fit.
18 So those three fellows, Grant Brown, Jeffrey Pauker and Megan
19 Kahn, while they're employed by Monitor Group, in fact, in 2005
20 they worked exclusively under the contract and in this case for
21 our purposes here, for Adam Doctoroff.

22 Now the events we're going to be talking about began
23 in the summer of 2005. In 2005, in July, the owners of
24 Recycled Paper decided to sell the company. And they did it
25 through a method that's frequently used with companies called

1 an auction process. They went to a investment banker, you'll
2 hear the name William Blair and Company, and they offered their
3 company up for sale. And William Blair put out what is called
4 a teaser. Among the companies that got that teaser was Monitor
5 Clipper. And the man that you saw the picture of, Bill Young,
6 got it and he forwarded it to Steve Levin and Mark Pocharski.
7 Remember, those are the guys who are back over at Monitor
8 Consulting. He had a special reason to do that. He knew that
9 they had been the senior leaders working for Hallmark on the
10 project a few years before.

11 Now, a little bit about that project. In 2001 and
12 early 2002 Hallmark Cards undertook a top to bottom review or
13 fresh look of business model redesign. You'll hear it referred
14 to as the BMR. And they used a consulting company to do it,
15 Monitor Group. They did it under a contract. And under that
16 contract Hallmark disclosed to Monitor Group virtually
17 everything it had about the greeting card industry. Its
18 financial statements. Its financial projections. Its
19 extensive research in market research, consumer research,
20 product research, channel research, retailer research,
21 marketing strategies, customer terms, contracts with various
22 customers, everything. And the people from Hallmark and the
23 people from Monitor Consulting, Mark Pocharski, Steve Levin,
24 Stacey Raiche, worked together to build a business model
25 redesign which was presented in a series of presentations which

1 you'll see.

2 All this was confidential. It was to help Hallmark
3 look at the challenges going forward. The contract provided
4 that everything Hallmark gave to Monitor Group belonged to
5 Hallmark. Everything Monitor Group created as part of that
6 work belonged to Hallmark. And none of it could be used by
7 Monitor Group for any reason except the Hallmark project.

8 After Mr. Young asked Mr. Levin and Mr. Pocharski for
9 their thoughts, he sent an initial offer letter. On July 29 he
10 sent a letter to William Blair in which he stated, Monitor
11 Clipper Partners L.L.C, then the abbreviation you'll see from
12 time to time MCP, is pleased to make the following proposal to
13 acquire Recycled Paper Greetings. He went on in that letter to
14 say that MCP's strong interest in the company stems from a
15 significant amount of resident knowledge about this sector in
16 which RPG competes, which provides us with particular
17 enthusiasm, etc.

18 The significant amount of resident knowledge to which
19 he refers was Monitor Group's knowledge. All of which belonged
20 to Hallmark.

21 After Mr. Young sent this letter he assigned
22 Mr. Doctoroff, who is sitting here, to work on the project, be
23 the man who was the quarterback, I think he'll call himself,
24 the spearhead. And he worked with that standing case team,
25 Mr. Brown, Mr. Pauker and Ms. Kahn, to do due diligence. Dig

1 in to the company. See if we really want to buy it. And if we
2 do, what price would we pay?

3 And one of the first things that Mr. Doctoroff did
4 was he contacted Mark Pocharski because he wanted to know about
5 the work from Hallmark. And Pocharski told him, you'll see the
6 document, I don't know that I can share anything. The work we
7 did was Hallmark specific. That didn't slow Mr. Doctoroff
8 down.

9 By the way, I want to make one thing clear. Hallmark
10 does not contend that Monitor Group could not work with Monitor
11 Clipper on Recycled Paper. There was no non-compete in
12 existence in 2005. They were free to work with them. But what
13 they were not free to do was use anything that belonged to
14 Hallmark. That's the problem for Monitor Clipper using the
15 Group stuff because everything Monitor Group knew about the
16 greeting card industry came from Hallmark and their work for
17 Hallmark. They had never worked for any other greeting card
18 company. It was all Hallmark.

19 A little while later Mr. Kim, Peter Kim was one of
20 the people from the Clipper side, reports back to
21 Mr. Doctoroff. We're not finding much about the greeting card
22 industry. The information is sparse. That's not surprising
23 because Hallmark is a private company you'll hear. The only
24 public company in the area is American Greetings and you can
25 get public information in their S.E.C. filings but not very

1 much detail. And then the rest of the companies like RPG are
2 private and small companies. But Mr. Doctoroff kept pressing.
3 He told the case team and the people he was contacting, I'd
4 like to know about evolution of channels. I'd like to know
5 about the impact of the Internet. I'd like to know about
6 demographic information, competitive analysis, competitors
7 profiles, pricing trends. He really wanted to know a lot, all
8 of which Monitor Group knew because they had learned it from
9 Hallmark.

10 And, finally, he probed, he pressed, he went out and
11 talked to Stacey Raiche. He even went to Toronto where Juanita
12 Moore was. He didn't meet up with her up there but he was up
13 there and hoped to meet with her, trying to find out stuff
14 about the work they had done for Hallmark.

15 Now, every time you see an e-mail from Adam Doctoroff
16 you will see that after he asks for information, he always
17 says, obviously, I don't want anything confidential from
18 Hallmark. You'll see that every time. But he had been told by
19 Mark Pocharski way back on August 4, everything we have is
20 Hallmark specific. We don't know anything except what came
21 from Hallmark.

22 And, finally, on August 25 his efforts paid off. He
23 received an e-mail, as you know, you read e-mails from the
24 bottom, a man named Steve Levin, who I mentioned who was a
25 Monitor Group person, sent to Jeffrey Pauker an e-mail and

1 said, subject, greetings. Nothing else.

2 Up above Jeffrey Pauker on August 25 takes that
3 document and says, sends it on to Adam Doctoroff, Grant Brown,
4 Megan Kahn and Peter Kim, the other two members of the case
5 team and Mr. Doctoroff and Kim from Clipper. And he says,
6 documents from Levin's work on Hallmark attached below. I will
7 go through these this morning and pull out the most salient
8 information. Wanted to get the raw documents to you sooner
9 rather than later.

10 One document he attached was actually a public
11 document from 1999. The other three we'll talk about for a
12 minute. This is the Greetings Business Model Discussion, OEC
13 meeting. The OEC at Hallmark was the highest level executive
14 group that made decisions during the business model redesign.
15 These are the senior executives of the company. This is a
16 report that is, I think this one is about 68 pages long. You
17 will see it details lots of information about Hallmark's work.

18 The second one is a December 2001 version of the
19 report. This one is 110 pages long.

20 These documents lay out Hallmark's growth strategy,
21 its interpretation of the research of the market, where it
22 thinks things are going, how it thinks it can deal with the
23 issues and problems in the market, how it deals with the
24 Internet.

25 And the third thing is the item that was called the

1 Gold Crown Channel Analysis Status Update.

2 Now, during the trial you'll see each of these. I'm
3 not going to go into them now. This one was 55 pages long.
4 They are full of Hallmark's information. This one is
5 especially interesting because I think most people are familiar
6 with Gold Crown Stores. They're not owned by Hallmark,
7 largely. Hallmark owns a few but most of them are independent
8 businesses. And those independent businesses in 2005 could and
9 did in many cases buy from Recycled Paper. In fact, Recycled
10 Paper listed them as one of their top channels of distribution.
11 So you can see why Mr. Doctoroff and Mr. Levin were interested
12 in this report.

13 These were highly confidential presentations. You'll
14 hear that even within Hallmark they're not disclosed every
15 where.

16 Now, as you see them you will notice that some of the
17 pages in them contain public information. I think one of them
18 has a census report in it which, obviously, anyone can get that
19 from the federal government. But as a compilation of, entire
20 compilation, taking public information combined with Hallmark's
21 proprietary research to draw conclusions, these are Hallmark's
22 trade secrets.

23 Now, the information in these was from 2001 and even
24 before, some of the research back in the 90s. But you'll hear
25 testimony explaining that that research was still viable, still

1 used in 2005. These strategies were still in use in 2005. In
2 fact, many of them still are today. So Mr. Doctoroff's
3 repeated requests for this information finally paid off.

4 Now, you will also hear that Mr. Doctoroff relied on
5 the Monitor people to decide what they could share. You'll
6 have to decide how you interpret that. But Clipper had an
7 incentive in place to help encourage Monitor Group people to
8 help them. Mr. Levin, for example, was scheduled to receive an
9 award of over a quarter of a million dollars for his assistance
10 to Monitor Clipper on this project.

11 So what did Mr. Doctoroff do when he got these? That
12 is the subject of some dispute. In 2006, testifying in an
13 arbitration, Mr. Doctoroff testified he did not receive them.
14 In 2012, almost seven years after the event, in this case
15 testifying in a deposition, he had an epiphany. Confronted
16 with the fact that he had actually received these documents
17 with the evidence in the e-mails, he now remembers that he was
18 in a meeting and he got a Blackberry message. He couldn't read
19 it on his Blackberry in the meeting so he waited until he went
20 to his office. When he got to his office he opened them up and
21 he started to look at them and he realized that they might be
22 Hallmark confidential information. So he says he closed them
23 and deleted them and he told Mr. Kim to delete them. All of
24 this he remembers in 2012 but in 2006 he denied it. You'll
25 have to decide what you believe.

1 But what he did not tell Mr. Pauker to do, and this
2 is very significant, he did not tell Mr. Pauker you can't use
3 them. He said, don't send them to me. I don't want them in my
4 inbox. And Mr. Pauker and the standing case team, who worked
5 100 percent for Clipper on this project, used them and you will
6 see how they did. They were the people charged with drafting
7 the investment overview that the big guys at Clipper would
8 finally read and review to decide to buy Recycled Paper.

9 A few hours later that day Jeffrey Pauker sends to
10 Grant Brown and Megan Kahn, Levin decks condensed. Decks are
11 these Power Points, the term they used, they call them a deck.
12 It's just one page after another from a Power Point. That's
13 the three things we just looked at. He's condensed them.
14 Megan and I went through the documents from Levin. I tried to
15 condense the most salient information into the following
16 30-slide deck. Note, MCP staff are not included in this
17 e-mail. So, obviously, the message was received. Don't send
18 these to me, Mr. Doctoroff, or Mr. Kim. You guys can use them.
19 Don't send them to me.

20 In fact, that same day, and there will be some
21 dispute about the timing of this but it really doesn't make any
22 difference. Mr. Brown sends a message to Mr. Pocharski. Mark,
23 Steve mentioned, Steve would be Steve Levin, that the three OEC
24 meeting presentations from September, October and November 2001
25 might prove helpful to the RPG effort. Do you happen to have

1 these? Obviously, we would want to scrub any Hallmark specific
2 data.

3 Ladies and gentleman, the first one that he already
4 got was August and he got December. Levin apparently didn't
5 have October, November, September. He's saying you might look
6 at those too but you should scrub -- and Brown says, we'll
7 scrub any Hallmark specific data.

8 You'll see those OEC reports. You can flip through
9 them and decide. If you scrub the Hallmark data out, I submit
10 you'll be left with census data and a lot of blank pages.

11 A week later on September 7 Monitor's standing case
12 team got more Hallmark confidential information. Mr. Brown
13 received and sent out to Mr. Pauker and Ms. Kahn, again, more
14 TMG documents in the subject line. TMG stands for The Monitor
15 Group. One of them is Small Competitors and Deep Discount
16 Space. This, too, is a Hallmark document. Hallmark and the
17 Greeting Card Industry, Understanding Industry Trends. This,
18 too, is a Hallmark document. Remember what Mr. Levin said he
19 wanted? He wanted evolution of channels, demographic
20 information, competitive analysis, pricing trends, competitor
21 profiles. These two documents are rifle shots for that kind of
22 information. Together with the three OEC documents I just
23 talked about or the two OEC documents and the Gold Crown
24 document. These are the five presentations that Clipper stole.

25 As a result on September 19, a second round bid was

1 sent in and on behalf of, they will tell you on behalf of the
2 Fund II and we'll talk about that in a minute, Clipper sent in
3 a bid for \$305 million. The next bid from another bidder was
4 218 million. Kelso is another company, somewhat like Clipper.
5 They didn't have any Hallmark information.

6 Now, in the initial bid on July 29 Clipper had initially
7 suggested they would bid between 290 and 305 million. That
8 was after they knew they had Monitor Group's information
9 maybe, but now that they've seen it, they went to the high
10 end of the bid, \$305 million. But they weren't done. First,
11 we'll look at the actual bid letter. This is the letter they
12 wrote bidding 305 million. In the second paragraph they
13 point out, again, our strong interest in the company stems
14 from a significant amount of resident knowledge about the
15 greeting card sector. Furthermore, we have engaged
16 significant resources from MCP and Monitor Consulting Group.
17 The significant resources they've engaged were Hallmark's
18 five presentations.

19 Now, I expect you'll hear evidence that these
20 presentations were 3 years old so they were old and they were
21 stale. You'll have to decide whether they were old and stale
22 in the light of how they were used. You'll be told we didn't
23 use them. You'll have to decide from the evidence whether
24 they were used. Then you'll be told, oh, they were all
25 public information anyway. You'll have to decide whether if

1 you have a bunch of public information you lie about it.

2 But they went a little high. A few days later Mark
3 Thomas wrote to Bill Young, these are the three guys from the
4 top of the chart I showed you before. You know, I'd go
5 higher on this one. I'm probably 320 to 325 guy. This deal
6 is center of the bull's eye. And, in fact, a few days after
7 that the final bid was accepted at 317 and a half million
8 dollars for Recycled Paper.

9 Now, Clipper and Fund II weren't going to put up the
10 whole 317 and a half million. They were going to borrow a
11 bunch of it. This is where they went to the lenders. They
12 had to go out to the lenders to borrow almost \$200 million.
13 In doing that they made presentations. The Recycled Paper
14 people and the Clipper people and Credit Swiss, which is the
15 bank that was putting together the lending organization, made
16 presentations to various bankers about why you should lend
17 money to this organization.

18 And Mr. Yoon, Charles Yoon, who by now had replaced Adam
19 Doctoroff on the team as the quarterback, drafted talking
20 points of what he would say in a conference call. In
21 discovery in this case we were able to learn, as they were
22 working on the financing, the teleconference script he wrote
23 for himself. And he says, as you know MCP does not make any
24 investment unless we feel we have a real competitive
25 advantage. RPG is in the sweet spot of our investment

1 strategy. We know more about the greeting card industry than
2 anyone else. Monitor has done numerous consulting work for
3 Hallmark. They're bragging about it. We know more about
4 greeting cards because we've got Monitor. And the only thing
5 they know is what they learned from Hallmark and that all
6 belongs to Hallmark.

7 Now, once the deal was announced, Hallmark saw it in the
8 trade papers. And Hallmark's general counsel wrote a letter
9 to Monitor. He said, hey, we want our documents back. We
10 want an assurance from you that you haven't traded or shared
11 anything with Clipper and we want you to put in place what is
12 called a litigation hold. We want you to preserve all the
13 documents, don't be deleting any e-mails, keep everything.
14 You'll hear what a litigation hold is. We'll come to that,
15 where that leads in a minute. But after they negotiate the
16 transaction, they finally buy the company in December of
17 2005.

18 And they send a memo to their internal partners. And
19 this, internally, this is what they're saying inside. MCP
20 emerged as the winner of a competitive auction based on
21 management's preference, the value we're able to bring to
22 bear and Monitor Group's deep knowledge of the greeting card
23 industry. All of which belongs to Hallmark.

24 Few sentences later, Monitor had historically worked for
25 one of the major greeting card manufacturers and MCP was able

1 to glean industry insights from Monitor Group. Those
2 industry insights were Hallmark's insights.

3 Now when they bought the company they created a series
4 of other companies. And you'll hear a lot about this but I
5 just want to give you the names so you'll understand where
6 they fit in the picture. At the top you have Monitor Clipper
7 Partners. Charles Yoon, who had taken over for Mr. Doctoroff
8 and Bill Young are the principal players in the RPG
9 transaction. RPG at the bottom was bought and owned by a
10 company called RPG Holdings. RPG Holdings was owned by RPGI
11 or RPG, Inc. and that was owned by Fund II that I've talked
12 about.

13 Fund II is a group of funds, couple of funds with lots
14 of investors. It's a limited partnership. And a limited
15 partnership you'll hear can only act through its general
16 partner. And the general partner of Fund II is an entity
17 called, this is a shorthand because it has a longer name,
18 Clipper 2 Limited Partnership. It's the general partner of
19 Fund II. Then Clipper Group GP is the general partner of
20 Clipper 2 LP. And the one up there at the top there, Clipper
21 GP, if I may, this one here, the governing board of that
22 entity are all Monitor Clipper Partners. Partners from
23 Monitor Clipper. Mr. Yoon and Mr. Young are from Monitor
24 Clipper. Mr. Yoon and Mr. Young are president and secretary,
25 treasurer of RPGI. They're on the board of RPG Holdings.

1 And they're on the board of Recycled Paper.

2 I submit the evidence will be that Clipper managed and
3 ran RPG. And what they did was they used Paul Maxwell, the
4 other name that you saw on the list, who worked with the
5 people at RPG over time. Time does not permit me to go into
6 all the details there but you'll hear that testimony as well.

7 Now, I'd like to turn briefly to the cover up. Remember
8 Mr. Gardner at Hallmark, who you will hear, sent a notice to
9 Clipper, excuse me, to Monitor Group to retain your
10 documents. And he also asked that Monitor Clipper retain
11 their documents. And Mr. Young got a copy of that letter.
12 He knew about it. But in January of 2006, as of then Clipper
13 had put in place no litigation hold. They had done nothing
14 about preserving documents. Through their counsel they deny
15 that they ever received any confidential information.

16 In March and April two members of that Monitor's
17 standing case team, Mr. Brown and Mr. Pauker, left the
18 company. These are the guys that worked 100 percent for
19 Monitor Clipper, dedicated to them, they left the company and
20 their computers were erased.

21 In July of 2006, Mr. Kim left Clipper and his computer
22 was erased. Still no litigation hold.

23 In August, as I told you, Mr. Doctoroff denied under
24 oath that he had received any Hallmark information. In fact,
25 what he said in answer to the question was, I don't believe so,

1 no. Again, we weren't asked specifically not to receive it.
2 So I don't believe so, no.

3 In January of 2007, Clipper coordinated an effort to
4 image the computers and purge Hallmark information from a
5 series of people at RPG and at Clipper. One of the people
6 whose computer was to be imaged was Paul Maxwell, the man
7 from Clipper who working with RPG. He had a program on his
8 computer that you'll hear about called Shredder. He ran it
9 the day before they made an image of his computer.

10 In March Monitor Consulting undertook an exhaustive
11 search within the consulting group for Hallmark's documents.
12 At this point the cover-up began to unravel. The last member
13 of the standing case team, Megan Kahn, left Monitor in June.
14 They were able to capture some of her e-mails.

15 In July Monitor's counsel found that e-mail that I
16 showed you earlier from August of 2005 that transmitted those
17 Hallmark confidential documents to Mr. Doctoroff. She found
18 it. She reported it to Clipper, to their management so that
19 they understood what had happened. She didn't tell Hallmark.
20 And Clipper didn't tell Hallmark either. Hallmark was kept
21 in the dark. In fact, during this time Clipper and Hallmark
22 were in a negotiation of what you'll hear is called a
23 confidential agreement. It was an effort to avoid this case.

24 Clipper agreed to search its computer systems and if it
25 found no Hallmark information, other than incidental things

1 that would not prove to be intentional misconduct, Hallmark
2 would not sue them. But in May of 2008, almost a year later,
3 the Monitor Group lawyer had to disclose to Hallmark what she
4 found the previous year. And she told Hallmark that Clipper
5 had received Hallmark confidential documents way back in
6 August of 2005.

7 I submit to you, ladies and gentlemen, that's evidence
8 of intentional misconduct which is sufficient to allow
9 Hallmark to bring this case and it brings us here today.
10 Once we brought the case we found a lot more evidence of
11 deceit.

12 You'll hear four witnesses for Hallmark. Don Hall will
13 testify here today. He's the president and CEO of the
14 company. Wayne Strickland, who is president for Hallmark for
15 its Wal-Mart business. He's actually a Hallmark employee.
16 He's not a Wal-Mart employee but he manages the Wal-Mart
17 business. John Maynard will testify later this week. He has
18 worked in Hallmark's research department for many years.
19 And, finally, Brian Gardner, the general counsel of Hallmark,
20 to talk to you about the cover-up.

21 Unfortunately, many of the witnesses from Clipper, Mr.
22 Young, Mr. Yoon, Mr. Thomas will not be here. But we have
23 videotape depositions of them. The parties will be showing
24 you videos of the witnesses who do not come in person. We
25 both worked together to make them as short as we can but I'll

1 be the first to tell you it's not the most exiting television
2 you'll ever see. We appreciate your patience as you watch
3 it.

4 At the conclusion of the case Hallmark will be asking
5 you for a verdict for Hallmark in the amount of millions of
6 dollars. Thank you for your time.

7 THE COURT: Defendants?

8 MR. MANCHEL: Yes, Your Honor.

9 THE COURT: Mr. Manchel.

10 MR. MANCHEL: May it please the Court.

11 THE COURT: Go right ahead.

12 MR. MANCHEL: Good morning.

13 My name is Steven Manchel and along with my
14 co-counsel I represent the defendants in this case, Adam
15 Doctoroff and Monitor Clipper Partners.

16 What you just heard was designed to lead you to
17 believe that the information at issue in this case goes to the
18 heart and soul of Hallmark and that's what this case is about.
19 But you will learn that that is not what this case is really
20 about. You will learn, and I think you've seen it already,
21 that this case is really about Hallmark being upset at the
22 company that it hired to be its consultant, Monitor Group.
23 Monitor Group is not a defendant in this action.

24 The evidence will show that in 2001 Hallmark hired a
25 consulting company named Monitor Group. The information that

1 you saw up on the screen, those presentations, was created by
2 Monitor Group in 2001 and 2002. The evidence will show that
3 Monitor Group and Hallmark signed a contract. The contract
4 between Monitor and Hallmark had nothing to do with my clients.
5 You will see that the contract provided specifically that 30
6 days after the close of Monitor's work, if Hallmark thought
7 that Monitor had confidential information belonging to
8 Hallmark, and you just heard the argument that everything
9 belonged to Hallmark, if Hallmark believed that the contract
10 provided specifically that within 30 days Hallmark could
11 request that its information be returned.

12 The evidence will show Monitor's work ended in 2002.
13 But when the work ended the evidence will show that Hallmark
14 left the presentations at issue in this case behind. And you
15 will see that Hallmark is upset now with what it claims Monitor
16 did with those presentations. But you will not see anything
17 that Hallmark's claims, and you didn't hear it today, about
18 what Clipper supposedly did with the presentations.

19 We were discussing, you heard from plaintiff's
20 counsel the demand letter.

21 Trial Exhibit 1268, please.

22 This is the letter that you were just shown. You see
23 the date on the letter? The date on the letter is November 22
24 of 2005. It is a demand for the return of all Hallmark related
25 documents. That's three years after the work ended.

1 Let's look at the first sentence of the letter. We
2 were shocked to learn that you are entering into direct
3 competition with Hallmark Cards after you obtained Hallmark's
4 most confidential core business trade secrets through an
5 intimate consulting relationship under which Hallmark paid you
6 millions of dollars. You will learn in the course of this case
7 that Clipper had no idea, no idea that Hallmark would have any
8 problem with Monitor working with Clipper. And you will learn,
9 in fact, that the ability of Monitor to work on the RPG deal,
10 this direct competition, Monitor was not only allowed, the
11 contract that Hallmark signed with Monitor, you will see,
12 specifically allowed for RPG.

13 Let's take a look, please, at consultants agreement
14 1264.

15 This is the contract you will see between Hallmark
16 and Monitor. You can see up there. The Monitor Company Group,
17 Hallmark Cards, Inc. The evidence will show that this was the
18 deal between Hallmark and Monitor that governed the work that
19 Monitor did for Hallmark.

20 Please go to page 7.

21 Take a look, please, and please remember this when
22 you see this agreement during the course of the case, paragraph
23 number 18. Monitor agrees that for the later of the period of
24 this agreement or the last day Monitor performs work pursuant
25 to this agreement and for 24 consecutive months thereafter it

1 will not directly or indirectly compete. Two years. That's
2 it.

3 Then if you turn to the next page, you'll see that in
4 this contract, in the very agreement that governed the
5 relationship, Monitor got to work with Recycled Paper products.

6 The letter that was sent to Monitor, not to Clipper,
7 was sent over one year after the two-year period expired. The
8 evidence will show that in the fall of 2005 RPG had become the
9 number 2 competitor to Hallmark in the country. And the
10 evidence will show that in the fall of 2005 RPG threatened to
11 significantly impact Hallmark's revenue at its two top vendor
12 sources, Walgreens and Wal-Mart. In fact, you'll learn, having
13 nothing to do with Clipper and having nothing to do with
14 Monitor, that before RPG was put up for sale Walgreens
15 conducted a test between RPG and Hallmark. And Walgreens
16 concluded that RPG's humor cards were so good they should be
17 put into 1200 Walgreen Stores and replace Hallmark Shoe Box
18 cards. That's why you will see the price at RPG continued to
19 rise. Then the evidence will show that Wal-Mart called RPG,
20 unsolicited, to see if RPG would like to put its cards into
21 Wal-Mart.

22 Now, Hallmark found out that one of the top
23 consulting companies in the country, the company that Hallmark
24 thought was so good Hallmark hired, was going to work with RPG
25 and the letter was sent.

1 I wonder if you're curious about one thing at this
2 moment. I haven't mentioned Clipper or Adam Doctoroff other
3 than to introduce them to you. The evidence will show that all
4 the things that we've discussed, all the things you heard,
5 mostly all the things you heard from Hallmark, had nothing to
6 do with Clipper or Adam Doctoroff. You'll learn, for example,
7 that Clipper heard about RPG through a voice mail left on its
8 general mailbox. That's how Clipper heard that RPG was up for
9 sale. And you'll learn that after the call was brought in to
10 Bill Young, they started to take a look at this project.

11 But I want to be clear about something because you're
12 going to hear lots of names, lots of companies, lots of
13 corporate structure issue. Clipper did not buy RPG. Clipper
14 did not own RPG. The evidence will be absolutely clear that it
15 was owned by others.

16 This is the ownership structure of RPG. The company
17 you see on the bottom, RPG, Inc., that's the company that sells
18 the cards. It was owned by RPG Holdings. That was owned by
19 RPG Investment. The little box that you see to the left, those
20 are the companies that were set up by the former owners of RPG
21 who believed so much, the evidence will show, in RPG's future
22 that they invested their own money. And then, finally, you see
23 at the top, Fund II.

24 Let's be very clear about Fund II. Fund II has over
25 90 limited partners. Clipper is what you see there on the

1 bottom. That's the piece that Clipper owned indirectly of RPG.

2 The name of the fund is Fund II. And you will see
3 that Fund II hired Clipper to go out and find companies that
4 Fund II might be interested in investing in. The way it works
5 and you'll see in this case it worked not only for RPG but it's
6 the way it works in the industry is Clipper goes out and raises
7 money. Gets all sorts of very large, very sophisticated
8 institutional clients to pool their money and then Clipper
9 researches the market to see what companies Fund II might be
10 interested in buying. And that's exactly what happened in this
11 case. You will see all sorts of financial analyses and reports
12 and accountants and attorneys and analysts pouring over
13 information to decide whether RPG is something Fund II should
14 buy.

15 But I'm going to ask you, please, as you listen to
16 the conversation, the evidence that is going to be presented
17 that you remember that figure. That 1.4 percent figure. What
18 ever number you hear used, what ever ownership you hear
19 claimed, that's the fact that will be shown to you through the
20 evidence. 1.4 percent of whatever it is that you hear.

21 You also heard about the bids during the opening
22 remarks of Hallmark. You heard about how the bid for RPG had
23 to reflect the use by Clipper of the confidential information
24 that is at issue in this case. Let me show you the bids. See
25 the first bid? The range is 290 to 305 million. That bid, the

1 evidence will show, Hallmark admits Clipper couldn't possibly
2 have had access to any confidential trade secret information.
3 That's the first bid.

4 The second bid is exactly in that range. And it's
5 the second bid that Hallmark says, well, now, Clipper has
6 access to the confidential information.

7 The price that was ultimately paid for RPG was
8 \$317 million. But you will learn that that money wasn't paid,
9 first of all, at all by Clipper. Clipper is not the owner.
10 And you'll also learn that the money wasn't, in fact, paid by
11 Fund II in large measure. The evidence will show that a bank,
12 a bank not in this case, a bank that is not a defendant, loaned
13 over half of the money spent on the RPG deal. The evidence
14 will show that one of the largest banks in the country, Credit
15 Swiss, reviewed the RPG deal on its own, thought the price that
16 was being paid was correct and determined that it would lend
17 twice the amount of money that Fund II was putting in. And
18 there is no claim and you will not hear any claim that this
19 bank, too, had access to Hallmark trade secret information.

20 Hallmark claims that Clipper used Monitor to get an
21 advantage. I want to be very clear about this. They did.
22 Hallmark, Clipper absolutely used Monitor to get an advantage.
23 Clipper did seek Monitor's help, absolutely. You will see a
24 videotape of Bill Young, a videotape that was made when
25 Hallmark took his deposition. Bill was a founder of Monitor

1 and then became a founder of Clipper. You will see that Bill
2 Young was the person at Clipper who got the phone call about
3 RPG being up for sale. And you will see that Bill Young
4 reached out for people at Monitor. In fact, the evidence will
5 show that Bill Young reached out for people at Monitor that he
6 thought had worked on the Hallmark project. My client, Adam
7 Doctoroff, also reached out for people at Monitor that he
8 thought had worked on the Hallmark project. And I want to be
9 very clear about this with you because the evidence will show
10 exactly this, I promise. When they reached out for those
11 people, they knew they had worked on Hallmark and they knew
12 that Monitor likely had confidential information. That's why
13 every time they spoke to Monitor, every time they spoke to
14 someone from Monitor, they made it very clear, we do not want
15 confidential information. We expect you to honor your
16 confidentiality policies. You will learn that they made it
17 absolutely clear that they did not want any Hallmark
18 confidential information.

19 You will see that they knew when they called that
20 Monitor has a confidentiality policy and that they expect
21 Monitor to honor the confidentiality policy. You will hear
22 from Adam Doctoroff and almost every Clipper witness who was
23 asked this question, did they think when people sign an
24 agreement and when people agree to keep things confidential
25 they expect it to be kept confidential and they rely on Monitor

1 to police itself. This was Monitor information from a Monitor
2 client. And you will hear evidence that there were occasions
3 in the past on other deals where Monitor said, no, I'm sorry.
4 We can't help you with this project because for us to do it
5 would require us to disclose confidential information.

6 You heard in opening remarks that Clipper bragged
7 about Monitor. It did. Clipper believed that Monitor was one
8 of, if not the top consulting companies in the United States.
9 And the evidence will show and I don't know what other proof to
10 give you is that Monitor was hired by Hallmark. And what you
11 will see is Monitor was hired by Hallmark at a point in time
12 when Monitor had very little, if any, greeting card experience.
13 So there is no company that knows better than Hallmark that
14 Monitor and Clipper don't need any confidential information in
15 order to help turn a greeting card company around.

16 You will also see there's nothing unique or different
17 about the way Clipper and Monitor work on a project. You will
18 hear testimony from witnesses and from an expert who will show
19 you that the structure between Monitor and Clipper, a private
20 equity firm needing a consultant and working with a consultant,
21 is not unusual.

22 Let's talk about the information itself. You're
23 going to hear all sorts of evidence about all sorts of
24 information. You heard some of it already. Hallmark gave
25 Monitor everything. Hallmark shared everything with Monitor.

1 Monitor worked on all sorts of things for Hallmark. You will
2 learn that this case though is about the attachments to three
3 e-mails. That's it. The information that Hallmark claims was
4 taken was attached to three e-mails.

5 The first e-mail will be Trial Exhibit 487. This is
6 an e-mail in August of 2005 from a Monitor employee. Not my
7 client, not the defendant in this case. A Monitor employee.
8 That is sent unsolicited, never asked for, to Adam Doctoroff.
9 Mr. Doctoroff saw the e-mail. The evidence will show that he
10 decided the information might be confidential, might be
11 confidential and immediately deleted it. And the evidence will
12 show, ladies and gentlemen, this is the only e-mail that ever
13 touched Clipper. This is the only e-mail that ever touched
14 Adam Doctoroff.

15 Now, the opening, we talked, you heard all sorts of
16 conversation about Adam Doctoroff. Did you notice there was no
17 representation to you because I'll represent that none exists,
18 about Mr. Doctoroff reading this information. You were brought
19 through the attachments that were attached to the e-mail. They
20 were. But the evidence will show that the e-mail was deleted
21 when Mr. Doctoroff received it. And now he's being sued
22 personally.

23 The evidence will show that the reason he's being
24 sued personally is because he volunteered to give a deposition
25 in another case. And in response to the question, did you or

1 Clipper receive confidential information, you heard, he said I
2 don't believe so. I don't think we did.

3 The evidence will show that Adam Doctoroff at the
4 moment Fund II was deciding whether to buy RPG wasn't even at
5 Clipper. He was in a hospital with his wife having a child.
6 And the deposition that you just heard referenced, the evidence
7 will show, occurred almost one year later after that event.
8 And he said I don't believe I got it because he did not
9 remember that he received one e-mail in the context of the
10 entire transaction that he then deleted. But now he's here
11 personally.

12 The second e-mail we'll show you, this is the second
13 e-mail that's at issue in this case. Please remember this.
14 This is an e-mail written by a Monitor employee to a Monitor
15 employee. There is no Clipper person on this e-mail. We did
16 not even know this e-mail existed. The evidence will show the
17 defendants did not know this existed before the lawsuit began
18 because it's at Monitor. And you will learn that this e-mail
19 was intentionally kept from Clipper. If you take a look at the
20 body of the e-mail which you'll see over and over. Megan and
21 I, those are Monitor employees, went through documents from
22 Levin. He's a Monitor employee. And I have tried to condense
23 the most salient information into the following 30-deck slide.
24 Note, MCP staff are not included in this e-mail. That's
25 Clipper.

1 This is an e-mail that goes to what you just heard
2 it's called the Monitor standing case team. They are Monitor
3 employees. They are hired, they are trained, they are paid,
4 they are disciplined, they are promoted and they are demoted by
5 Monitor. You will learn that Clipper never heard of this
6 e-mail and never saw this e-mail.

7 And then there is the third e-mail that's at issue in
8 this case. This again, everybody on that screen are Monitor
9 employees. These are Monitor employees communicating with
10 Monitor. And you will learn that Adam Doctoroff and Clipper
11 never knew about this e-mail and never knew what was going on.

12 But there is a reason why Monitor never shared this
13 with Clipper. You heard the reason was because Adam Doctoroff
14 walked down the hall and said, I don't want to see it but you
15 use it. The reason it wasn't shared, the evidence will show,
16 is if Clipper and Adam ever wanted confidential information, it
17 would never be this. Ever.

18 You will see that it's very important for you to
19 understand what Hallmark is asking you to do in this case.
20 Hallmark is asking you to do, I think the evidence will show
21 you, Hallmark is asking you to do four things. First, Hallmark
22 is asking you to make my clients pay damages because of what
23 other people did. Second, Hallmark will be, the evidence will
24 show and you will see, that Hallmark will be asking you to pay
25 damages because other people got benefits. Third, the evidence

1 will show you and you will see that Hallmark is asking you to
2 award damages because Hallmark claims that the information in
3 2005 was worth exactly what it was in 2001. But most
4 importantly, the fourth reason, and that's the reason for the
5 e-mail never being shown to Clipper. Hallmark, the evidence
6 will show, is asking you to award damages because it thought
7 that Clipper or it argues that Clipper wanted 100 percent of
8 what was in the attachments.

9 Hallmark will present one witness on this issue. His
10 name is Dr. Serwin. He's their expert witness. And you will
11 see that Dr. Serwin will say that my clients should pay money
12 beyond anything they ever made in connection with RPG because
13 100 percent of what is in those e-mails was wanted by my
14 client, was worth exactly what it was before, was secret still
15 and was valued. I want you to remember, please, as you listen
16 to the evidence 100 percent.

17 You will learn that the damages that Hallmark asks
18 you to award fail if it's not 100 percent. And I promise you,
19 I promise you that the evidence will show it is impossible to
20 say but you'll decide, that my clients wanted 100 percent. We
21 will show you evidence of facts that the attachments weren't
22 secret. In fact, we'll show you evidence of Hallmark
23 disclosing the information to its competitors, to Hallmark
24 employees throughout the building, in a newsletter that anybody
25 could walk into the building and take with them. We'll show

1 you evidence of Hallmark disclosing this information to what is
2 called the Greeting Card Association, which is a trade
3 association that competitors participate in. So the evidence
4 will show you very clearly that this information wasn't secret
5 and the evidence will show you very clearly that this
6 information was, in fact, stale.

7 But most importantly the evidence will show you that
8 Clipper couldn't possibly have wanted it. You will see
9 evidence and Hallmark didn't take you through the presentations
10 but we will as the case goes on. You will see evidence in the
11 presentation of research on disposable dinnerware, stationery,
12 balloons, invitations. All of those things might have
13 something to do with Hallmark but none of those things, the
14 evidence will show, have anything to do with RPG. RPG only
15 sold cards and only sold humor cards at that.

16 You heard about Peter Kim and the fact that Peter
17 Kim's computer was erased. It was. Peter Kim's computer was
18 erased. Hallmark says it was erased to make sure that nothing
19 could ever be found. Once again, you'll see that Hallmark was
20 upset with the wrong people. Clipper, you will learn is very
21 upset that Peter Kim's computer was erased. You'll learn it is
22 upset about the erasure of the computer because Clipper didn't
23 know it had been erased. You saw the demand letter that was
24 put up on the screen for both us and for Hallmark. The demand
25 letter went to Monitor, not to Clipper. But the evidence will

1 show that Clipper got so concerned about Hallmark's threat that
2 Clipper went out, hired its own attorney. One of the largest
3 law firms in the country to give it advice on how it should
4 deal with Hallmark's letter and with what might follow.

5 And the evidence will show and you heard it mentioned
6 by Hallmark in their opening, that there is this thing called a
7 litigation hold. And it is. It's a real thing called a
8 litigation hold. And what it means in plain English is that
9 when the attorney determines that information needs to be
10 preserved, the attorney tells the client and the client sends
11 out what is called a litigation hold. It is a letter or memo
12 to the whole firm saying, if you had anything to do with this
13 matter, you must preserve your paper information and your
14 electronic information. And you will see that as soon as the
15 letter came in, Clipper went out and hired a law firm. And you
16 will see that the law firm did not tell Clipper to put a
17 litigation hold in for 18 months. And the minute the law firm
18 told Clipper to put the litigation hold in, Clipper put it in.

19 But what happened, you will see, is Peter Kim who is
20 the second most junior person on the entire RPG project quit to
21 take another job in New York. His departure had nothing to do
22 with this case you'll see. His taking another job had nothing
23 to do with this case. And you'll see that he turned his laptop
24 in in the ordinary course of business. You'll see that Clipper
25 processed the laptop because it's used by other junior people

1 and that is the entire story of the erasure.

2 You also heard about two computers being erased at
3 Monitor. I want to ask you to do one thing for me when the
4 testimony comes up about those two computers being erased. I
5 want you to try and find in this case the person who said they
6 were erased. It's going to be one person. You're going to
7 hear all sorts of things from all sort of people about all
8 sorts of computers. But I want you, please, to find the one
9 person who says the computer is erased. That person is going
10 to be someone named Laura Steinberg. I ask you to please
11 remember the name Laura Steinberg. The reason I ask you to
12 remember that is the evidence will show that was Monitor's
13 lawyer. Monitor's lawyer will testify that two Monitor
14 employees and the evidence will show in the midst of Hallmark
15 and Monitor fighting with each other, two Monitor employees
16 computers were erased. That's who will speak in this case to
17 the computers. They're not our employees. They weren't our
18 computers. We had no idea that Monitor would allow the
19 computers to be erased.

20 There is another contract in this case, another
21 important contract that we're going to ask at the end of the
22 case you folks tell Hallmark to honor. The name of the
23 contract is the confidential agreement. Clipper had its own
24 contract with Hallmark.

25 Now, this contract, you heard in opening and I think

1 you're going to hear it throughout the case, all sorts of
2 suggestions or comments about how Clipper and Monitor are the
3 same, the Monitor standing case team works only for Clipper.
4 This is what Hallmark represented to Clipper before this
5 lawsuit was brought. Whereas MCP and Monitor are separate
6 entities. That's Hallmark's words, the evidence will show, in
7 Hallmark's contract with Clipper. And that's before this
8 lawsuit was ever filed. MCP and Monitor are separate entities.

9 And the evidence will show that the purpose of this
10 agreement was that we wouldn't be here today. The purpose of
11 this agreement was to avoid litigation. And the deal was
12 pretty simple. The deal was as the evidence will show, if
13 Clipper agreed because Hallmark believed that Clipper had
14 confidential information. If Clipper agreed to let Hallmark
15 through search terms go through Clipper's computers, then
16 Hallmark, when the search was done, wouldn't sue.

17 Now you just heard about the letter that was found,
18 the e-mail that was found a year before this deal. But you
19 will see, the evidence you will see is in the middle of working
20 on this agreement, in the middle of working on this agreement,
21 Hallmark was told that Adam Doctoroff had received that e-mail
22 with the attachments. And you will see that Hallmark didn't
23 scream out, deals off. You'll see that Hallmark didn't yell,
24 you duped us. You'll see none of that. What you'll see is the
25 next step in the agreement which is the searching of the terms.

1 And then you will see right when Clipper was in the middle of
2 searching for the information that Hallmark asked us to search
3 for, Hallmark filed suit.

4 This agreement has a paragraph in it. The paragraph
5 in it says if the parties do steps 1 through 6 which we'll show
6 you what was being done in the course of this case, if they do
7 steps 1 through 6, look four lines from the bottom. Hallmark
8 will release from escrow the confidential mutual release. Or
9 2, file a lawsuit. The evidence will show that Hallmark did
10 not file a lawsuit when it was suppose to. That the time had
11 passed. And that it jumped the gun. And the evidence will
12 show that if it had honored this agreement, right there, number
13 1, release from escrow the confidential mutual release, I want
14 you folks to understand the evidence will show there is
15 actually a general release, a piece of paper being held by
16 Hallmark that was suppose to be released, suppose to cover my
17 clients and we would not be here. So at the end of this trial
18 I'm going to ask you to please make sure that Hallmark honors
19 its agreement.

20 At the end of the day I think that the information
21 will show, and the evidence will show, that Hallmark's very
22 upset with Monitor. And at the end of the day what I'll ask
23 you as you review the evidence is to please make this case just
24 about my clients. They're the ones who have been sued. And
25 for the reasons that I've articulated, as well as the evidence

1 you'll see, at the end of the case I'll ask you to, please, to
2 rule, No. 1, that release should be in force and effect. And,
3 No. 2, that no damages should be awarded against my clients.

4 I thank you in advance for your time, your courtesy
5 and your attention.

6 THE COURT: We would ordinarily go to about 10:30 but
7 this seems a propitious time to take a break. So let's take 15
8 minutes. Please remember not to discuss the case among
9 yourselves. Keep an open mind until you've heard the evidence
10 in the case and discussed it with your fellow jurors. We'll
11 see you back here in 15 minutes. We'll be in recess.

12 (Recess)

13 (The following proceedings were had OUT OF THE
14 PRESENCE AND HEARING OF THE JURY:)

15 THE COURT: I didn't want to embarrass our late juror
16 this morning so I said nothing to her during court. Eva has
17 spoken with her and let her know that we expect her to be on
18 time in the future.

19 Okay. Are we ready?

20 MR. AISENBREY: Yes, sir.

21 THE COURT: Okay. Eva.

22 Whose first, Mr. Aisenbrey?

23 MR. AISENBREY: Don Hall.

24 (The following proceedings were had IN THE PRESENCE
25 AND HEARING OF THE JURY:)

1 THE COURT: Please be seated.

2 Mr. Aisenbrey.

3 MR. AISENBREY: Thank you, Your Honor.

4 Plaintiff calls Don Hall.

5 DON HALL, PLAINTIFF'S WITNESS, SWORN

6 MR. AISENBREY: May I proceed, Your Honor?

7 THE COURT: Go ahead.

8 DIRECT EXAMINATION

9 BY MR. AISENBREY:

10 Q Mr. Hall, would you introduce yourself to the jury and
11 tell them what your position is?

12 A I'm Don Hall, Junior. I'm CEO and president of Hallmark
13 Cards.

14 Q Briefly, Mr. Hall, would you give the jury your
15 educational background?

16 A Yes. I have a bachelor of arts from Claremont McKenna and
17 an M.B.A. from the University of Kansas.

18 Q And also, briefly, can you give them, give us an overview
19 of the positions that you've held in Hallmark over the years?

20 A I've been with Hallmark a little over 30 years. My first
21 position was a section leader in our manufacturing facility. I
22 was a packaging section leader. Did that for a couple of
23 years. Then I moved into a graphic arts area where I was
24 department manager of art photo film finishing area which would
25 create the plates that were used for the lithography. After a

1 couple years in graphic arts I then became a line planer in
2 stationery, writing instruments. Later became in charge of the
3 marketing and new business responsibilities for our Keepsake
4 Ornament line. Then later became the head of creative,
5 overseeing all of the creative functions and the artists and
6 writers of the company. Then went on to head up our product
7 development activities for the Hallmark brand. And then became
8 the head of corporate strategy and development and then from
9 that position I was named the CEO.

10 Q It may well be pretty obvious but just to clear it, your
11 grandfather started the company, is that right?

12 A Yes, it is.

13 Q You worked, basically, up through all the positions you
14 just discussed?

15 A Yes.

16 Q I'd like to turn your attention to the time frame of 2001
17 and 2002 and a project called the Business Model Redesign. Are
18 you familiar with that?

19 A Yes, I am.

20 Q Can you describe for the jury what this was?

21 A This was a very extensive evaluation of our business. We
22 wanted to sit back and look at the business with fresh eyes and
23 try to look at all of the research that we had, look at the
24 consumer trends that were taking place in order to develop a
25 more effective strategy for the future that would guide our

1 decision making for many years to come.

2 Q Did you use a consulting firm for that?

3 A Yes, we did.

4 Q Who was that?

5 A Monitor.

6 Q Called Monitor Group or something?

7 A Monitor Group, yeah.

8 MR. AISENBREY: Your Honor, may I approach?

9 THE COURT: You may.

10 BY MR. AISENBREY:

11 Q Mr. Hall, I'm handing you what has been marked as Exhibit
12 D227. Can you identify that, please?

13 A Yes. This is the consultant services agreement. This is
14 the contract that we entered into, the consulting agreement
15 with Monitor Group.

16 MR. AISENBREY: Your Honor, I offer D227. I think
17 it's been stipulated to.

18 THE COURT: Without objection D227 --

19 MR. AISENBREY: Yes, sir.

20 THE COURT: -- is admitted.

21 BY MR. AISENBREY:

22 Q Mr. Hall, it's on the screen up there but if you want to
23 use the paper copy, whichever might be easiest for you to see.

24 If we could turn, first, Cindy, can you pull up that
25 first paragraph?

1 This is a contract that was signed December 5 of
2 2001, is that right?

3 A Yes, it is.

4 Q I think we just saw it a little bit in opening. This is
5 the contract between Hallmark and Monitor Consulting for
6 consulting services, is that correct?

7 A Yes.

8 Q If we could go to page 5, paragraph 9.

9 This paragraph 9 here describes the client furnished
10 data. In the first sentence, I'm going to read it and then ask
11 you to explain to me what that entailed. All data and
12 information submitted to Monitor by Hallmark in connection with
13 the deliverables and all output data and information generated
14 by Monitor pursuant to the statement of work on this project
15 which is then defined as the Hallmark data, belonged to
16 Hallmark.

17 First of all, Mr. Hall, what sort of data was
18 provided to Monitor?

19 A We gave Monitor very extensive information about our
20 business. We shared with them really virtually all of our
21 consumer data which would entail research about consumer
22 trends, purchasing behavior, knowledge that we had about the
23 use of greeting cards in the industry. We shared with them a
24 very extensive view of our financial data showing our
25 profitability, showing sales by various segments of the

1 business, terms that we would charge customers. So they had
2 complete visibility of what different customers were paying by
3 different channels. And we looked at all this information over
4 time periods to try to assess where our business was.

5 Q You used the phrase terms. Can you explain more clearly
6 what you mean by that?

7 A Yes. When we negotiate with a customer we agree to do
8 certain things for them. We agree to certain prices for the
9 product or different kinds of rebates. We agree to how we
10 would handle returns of product if product didn't sell in a
11 season or if it wasn't successful, we would agree to how we
12 would bring that product back and buy it back. We would agree
13 to things like obsolescence which means how frequently we would
14 go and remove lower selling product or product that wasn't as
15 fresh. It would speak to how we would handle merchandising
16 costs, who would pay for signing, how often it would be reset,
17 who would pay for the fixturing that's in the store. It would
18 cover things like services. In many cases we will actually
19 send our employees into the stores to supply the product and to
20 set up displays. But each of these elements of our business
21 would be carefully discussed and negotiated with each customer
22 individually. And those were comprised with the terms or the
23 cost of doing business with them with a specific customer.

24 Q You also used the phrase different channels of
25 distribution. What is a channel of distribution?

1 A Well, there are different types of retailers that we work
2 with. It would be things like Gold Crown Stores which would
3 be primarily independently owned card shops. They would be
4 chain drug stores like a Walgreens or CVS. It would be grocery
5 stores like Safeway. It would be chains like discount channels
6 like Wal-Mart. But those would be different channels of trade
7 and those customer strategies are different so we would
8 approach them differently based on the product offered.

9 Q You described the financial information and the customer
10 terms and research and stuff. Does Hallmark make that publicly
11 available?

12 A No, we do not.

13 Q Is it confidential?

14 A Yes. Absolutely. It's very confidential.

15 Q How is it handled within Hallmark?

16 A We handle it very confidentially. We treat all that
17 information very carefully. We are a private company. We
18 realize that that information is something that needs to be
19 protected because it could do real harm to us if it got out.
20 We have an ethic of creating confidence and reminding people
21 about the confidentiality throughout their careers.

22 Q If we could highlight the second sentence in paragraph 9.
23 It goes on to state in the contract with Monitor, that Hallmark
24 data shall be deemed confidential and will not be used by
25 Monitor, other than in connection with providing deliverables,

1 disclosed, sold, assigned by Monitor or commercially exploited
2 by or on behalf of Monitor or its employees or agents.

3 What was your purpose in defining it in that way,
4 what they could do with the data?

5 A Well, we were very clear at the very beginning that the
6 information that we provided to them or the information that
7 they would help us construct as we were involved in this
8 consulting agreement was all our information. The work
9 product, the deliverables, all of the things that came out of
10 that were deemed to be confidential. So anything we provided
11 to them about our business and anything that they shared back
12 in terms of conclusions, all of that work product was something
13 that we protected as being confidential information that we
14 possessed.

15 Q Now, when you hired, when you engaged Monitor did you do
16 that because they had a lot of experience in the greeting card
17 industry?

18 A No, no. We hired them because we felt like they could
19 help work with us to assimilate some of the information that we
20 had.

21 Q And so did Hallmark people work with them or did you just
22 turn this over to them and they came back later, here's what we
23 have?

24 A No. It was a very extensive consulting effort. They
25 brought a lot of consultative expertise but we paired that up

1 with our best, most knowledgeable people in Hallmark to work
2 side by side in developing this, this knowledge of what our
3 future strategy would be.

4 Q Would it fair to say that you educated them about your
5 business?

6 A Yes.

7 Q Now, you may have mentioned this but I want to be clear.
8 Are the terms with customers, the contracts with customers is
9 that like a price list? Would somebody call up Hallmark and
10 say, what's the general terms for a drug store?

11 A No. No. The terms are very confidential.

12 Q Now, you mentioned Hallmark research. What is that?

13 A We conduct a great deal of research. We try to understand
14 what kinds of trends there are with the consumer. We want to
15 understand how consumers connecting activities are changing
16 over time. We track that, monitor it very carefully. We
17 develop a great deal of information about what they're
18 purchasing, what they desire, what they are purchasing in terms
19 of our product. We have a great deal of information about our
20 customers, about the industry and track that information over
21 time.

22 Q Do you have a budget for research?

23 A Yes. We spend about \$14 million a year in collecting
24 information.

25 Q Did you provide any of your research to Monitor Group?

1 A We provided all of it. We gave them access to all of our
2 research.

3 Q Was this Business Model Redesign, is that sometimes called
4 the BMR?

5 A Yes.

6 Q Was the BMR an unusual project for Hallmark or is this
7 something you do from time to time?

8 A It's very unusual. We have never undertaken an evaluation
9 of our strategy like this before and we've not done one since.

10 Q Is it fair to say it was a big project for Hallmark?

11 A It was a very big project. It was one that we intended to
12 have reform our thinking about how we were going to compete and
13 win in the market place over time. And our intention was to
14 create a strategy that would guide our business for many years
15 to come.

16 Q So you mentioned Hallmark people worked with Monitor
17 people. Was this a consulting project that extended over a
18 period of time?

19 A Yes. It extended for many months and it was the
20 predominant focus of some of our best and brightest people.

21 Q Now, the project itself was about, a little over ten years
22 ago. What was your position at that time at Hallmark?

23 A At that time I was the, I was in charge of corporate
24 development and strategy.

25 Q Did you attend the Business Model Redesign meetings or

1 presentations?

2 A Yes.

3 Q Before we leave Exhibit D227, could -- We'll come back to
4 that?

5 Could I have Exhibit P487. And page 25.

6 Mr. Hall, do you recognize what is up on the screen
7 here?

8 A Yes. This was one of the reports that was provided by
9 the, by Monitor that summarized some of the progress during
10 that period of time.

11 Q What is that OEC?

12 A Well, the OEC stood for Organizational Effectiveness
13 Committee. It was a group of some of our most senior leaders
14 in the company. They would receive periodic updates on
15 progress on this report and some of the key conclusions that
16 were coming out of the work product.

17 Q Now, could we also have P487 and page 93?

18 Mr. Hall, can you tell us what this is?

19 A This is another presentation that was shared with the OEC
20 outlining some of the conclusions that were being reached by
21 the Monitor Group and our leaders about the future strategy.

22 Q And this was prepared by Monitor?

23 A Yes, it was prepared by Monitor. They put these decks
24 together but it was the work product of our extensive effort in
25 outlining our future strategy.

1 Q You say our, you mean Hallmark's and Monitor's together?

2 A Yes.

3 Q Could we have Exhibit 487, page 203?

4 Could you tell us what this is?

5 A This is a report on the Gold Crown channel, looking very
6 specifically at that channel of distribution. This would
7 include all of the independent card shops around the country
8 and an important channel of distribution, part of the process
9 was to look very closely at that channel of distribution.

10 Q You say independent card shops are these shops that are
11 not owned by Hallmark?

12 A Yes. There are about 3,000 independent stores. Hallmark
13 owns a very, very small portion of those. Most of them are
14 owned by independent business operators.

15 Q Okay. We'll see these particular presentations in detail
16 later today. But, generally, from your perspective, what do
17 they contain?

18 A Well, these contain the most important conclusions about
19 our business strategy for the future. This was the culmination
20 of the extensive work we did to try to understand how, what we
21 needed to do as a business to be successful in the future,
22 where those growth opportunities would be and how we could
23 effectively meet consumers needs and customers expectations.
24 This was the compilation of all of that information. It
25 identified the most important issues that underpinned our

1 strategy. It outlined conclusions and why we reached it and
2 outlined what we were going to do in the future to operate our
3 business.

4 Q Were they confidential?

5 A Highly confidential.

6 Q Were they widely distributed within Hallmark?

7 A No. No. There would be only a very small group of people
8 at Hallmark that would have access to these compilations. Not
9 even all, not even our officers would have all seen this, even
10 a subset of our corporate officers would have had access to
11 this.

12 MR. AISENBREY: Your Honor, I offer Exhibit 487.

13 THE COURT: Without objection, 487 will be admitted.

14 BY MR. AISENBREY:

15 Q Mr. Hall, I'd like to turn to Exhibit 488, page 2. Can
16 you tell the jury what this is? It says Hallmark --

17 A This is a report about the Hallmark and greeting card
18 industry and outlining the industry trends. I believe it was a
19 very extensive review of trends that we were seeing in the
20 industry and things that we thought were particularly relevant
21 to forming our strategy going forward.

22 Q Are trends important to you in doing your work at
23 Hallmark?

24 A Very much so. This is a business that doesn't change
25 dramatically overnight. It changes slowly and gradually and

1 usually in the same direction. What we were doing was looking
2 very carefully at the information that we had about the
3 consumers, about customers and about those trends. And trying
4 to understand where the industry was going so that we could
5 develop strategy of moving in that direction. This outlined
6 what some of those trends were and how we would build our
7 strategy.

8 Q Was this also a presentation from the BMR?

9 A Yes.

10 Q Could we have Exhibit 488. This is Small Competitors in
11 the Deep Discount Space. Can you tell us what this is, Mr.
12 Hall?

13 A This is a part of the BMR work where we focused very
14 specifically at the changes that were occurring within the
15 smaller competitors, within the deep discount space. This is
16 kind of an evolving place of business with the emergence of
17 deep discount card stores like Family Dollar and Dollar
18 General. We were trying to understand how that would change
19 the landscape of retail but also specifically what that would
20 mean in terms of what our strategy should be.

21 Q I'd like to turn to the issue of confidentiality at
22 Hallmark. Start out with this question. Is confidentiality
23 important to Hallmark?

24 A Yes, it's very important.

25 Q I'd like to --

1 Judge, I forgot to offer Exhibit 488.

2 THE COURT: Without objection 488 is admitted.

3 BY MR. AISENBREY:

4 Q We were talking about confidentiality. Is that important
5 at Hallmark?

6 A Yes, confidentiality is very important.

7 Q How is it instilled in the employees?

8 A We build a culture where we appreciate the importance of
9 maintaining the confidentiality of important information. It
10 begins really on somebody's first day at work. We, every
11 employee signs a confidentiality agreement when they begin at
12 Hallmark. It underscores the importance of maintaining
13 confidentiality expectations. We frequently discuss this and
14 remind people about the importance of confidentiality. We have
15 policies to that effect. Our policy 124 outlines the
16 importance of maintaining confidentiality. It's available to
17 all employees on our intranet but we insist that managers
18 review it and read it again annually and sign off they have
19 read it and are reminded about the importance of
20 confidentiality.

21 Q How is confidential information specifically handled at
22 Hallmark?

23 A We maintain the confidentiality based on the need to know.
24 If somebody is in possession of confidential information they
25 know that they are. And they know that they share that

1 information only with people who have a need to know it. It's
2 not sufficient if they want it. They need to have the
3 information. And it means the person that has it needs to
4 insure that the person receiving it is authorized and has a
5 need for that information.

6 Q What about things like research reports that you discussed
7 and the financial information or contract terms, is that just
8 standard confidential information?

9 A All that information is highly confidential and it would
10 have been deemed that way. Its dissemination would be very
11 restricted. We would know who should receive certain levels of
12 that information and are very careful in terms of how we share
13 that information within our business.

14 Q Now, Mr. Hall, I think most of us in the room have read
15 about, heard about Hallmark. We read about it in the paper.
16 Hallmark discloses some information publicly, doesn't it?

17 A Yes. We choose to share some information from time to
18 time. It's always when we know it's to our benefit. When we
19 do share it, it's for a business purpose. It's thoughtfully
20 considered. We make sure that we feel comfortable in sharing
21 it and it's typically a very broad, very directional and
22 nothing that would be specifically compromising in terms of a
23 competitive position. So we evaluate it very carefully before
24 we use it in that way. But we from time to time do make some
25 information available. We think it helps advantage the

1 business.

2 Q So, for example, in a presentation like one of the ones we
3 just saw, do you ever turn this over, as I'm holding it here in
4 my hand, to anybody?

5 A No. We never would do that. That is a compilation of the
6 most important facts about our business. It's really our
7 secret sauce and we would not make that available.

8 Q Would any information from that report or that may be
9 contained in that report ever be disclosed?

10 A There may be some from time to time where we might choose
11 to take little bits and pieces, little nuggets that we might
12 feel would be important to share with different groups for
13 specific reasons but it would be very carefully considered.

14 Q Is all confidential information at Hallmark marked with a
15 confidential stamp?

16 A Most of it is. But everybody knows when they have
17 confidential information and they know how it should be
18 treated. We remind people of that frequently. I talk about it
19 often in our all employee meetings and with different
20 activities but this is something we continually remind and
21 stress.

22 Q So was the BMR work among the confidential materials you
23 talked about?

24 A Yes. It's probably our most confidential information.

25 Q Was there, was it all Hallmarkers working on it or how did

1 you staff it from the Hallmark side?

2 A No. We staffed the project with some of our most talented
3 marketing leaders. It was a very small subset of people and
4 they worked on it. Some worked on only portions of it. A much
5 smaller group would have seen the entire compilation.

6 Q I'd like to talk briefly about competition. Start with
7 the question, is the greeting card business competitive?

8 A Very competitive.

9 Q You are familiar with a company called Recycled Paper
10 Greetings?

11 A Yes, I am.

12 Q Sometimes referred to as RPG, is that right?

13 A Yes.

14 Q In 2005 what was Recycled Paper's position as a competitor
15 of Hallmark?

16 A Recycled was our second largest competitor.

17 Q I think we've talked about Gold Crown Stores a little bit?

18 A Yes.

19 Q Were they able to sell RPG products?

20 A Yes.

21 Q In 2005?

22 A Yes.

23 Q We heard in opening statement that Walgreens was a
24 customer of Hallmark, is that right?

25 A Yes.

1 Q And they were selling RPG products as well?

2 A Yes, they were.

3 Q Now, you told us that the customer terms that you had with
4 various channels of distribution or customers like Walgreens or
5 whatever are confidential and tightly controlled. Why does
6 that have to be confidential? Why is it a secret, what the
7 terms are with Walgreens?

8 A Well, this is a very competitive industry and every time
9 you're working with a customer, you're working with them
10 individually and they're trying to decide whether to choose
11 your offering or somebody else's. And so it's a competitive
12 bidding process. And the terms that we offer are a very
13 important consideration as they choose which customer they want
14 to work with.

15 Q So how could a competitor use your information, if they
16 knew it?

17 A Well, a competitor if they had this information would
18 understand the kinds of things that we were offering. They
19 would understand what kinds of things they needed to offer in
20 our position. They would understand our cost structure behind
21 some of those different elements like service or fixturing or
22 signing. They would understand what they might need to do to
23 counter at that. And if they let a customer know any of that
24 information then that would be very powerful for a customer in
25 terms of understanding what they should demand of a contract

1 and how they should negotiate those pieces. I'm not a poker
2 player but I do know that if you were to try to play poker with
3 somebody and you had all your cards on the table and everybody
4 knew what you had in your hand but you didn't know what they
5 had in their hand, you would lose. And that's a lot like the
6 bidding process when you go through a contract renewal with a
7 customer.

8 Q Now, we're concerned here with the events that occurred in
9 2005 and 2006. I guess the question I have is wouldn't
10 information in these BMR reports that we've seen, which was
11 from 2001 and early 2002, wouldn't that be out of date by 2005?

12 A No. It would not be out of date in 2005 and it's not out
13 of date today. In 2005 there were still contracts in existence
14 that would have been part of that BMR so the specific terms of
15 those current contracts would have been visible. But as I
16 mentioned earlier the trends in this industry don't change
17 quickly. So directionally this would give people a great deal
18 of information then. And even today it would be descriptive of
19 some of the costs of our model. It would talk about the trends
20 and importantly it would describe the strategy that we're still
21 using today.

22 Q What about the research though, the research that was in
23 there was from the 95 to 2000 time frame. Would that still be
24 useful in 2005?

25 A Absolutely. This information is information that we would

1 have known about the industry, we have a great deal of
2 information about it. And it would have been very useful to
3 others who wouldn't have had that information.

4 Q Were you satisfied with the results of the BMR?

5 A Yes. Yes. It was very important work.

6 Q If we could go back to Exhibit D227 for a minute. If we
7 could go to page 7 paragraph 18.

8 Mr. Hall, do you have that in front of you?

9 A Yes.

10 Q This is a paragraph we saw in opening. It deals with,
11 says, conflict of interest. But it deals with the, what I
12 think is called a non-compete. Are you familiar with that?

13 A I'm sorry. I thought I had the right page.

14 Q It's page 7. I'm sorry if I said --

15 A No. Page 7. Okay.

16 Q Are you familiar with the concept of a non-compete?

17 A Yes.

18 Q And we see here that in this contract Monitor agreed that
19 it would not work for a series of other companies that are
20 listed for 24 months after the conclusion of the work on the
21 BMR, is that right?

22 A Yes.

23 Q So one of the companies, in fact, that is listed is on the
24 next page is Recycled Paper Greetings. It's a full series of
25 greeting card companies there?

1 A Yes.

2 Q Now, since you have turned over all of this confidential
3 information to Monitor, were you, are you saying that you don't
4 believe they should have been permitted to work with Recycled
5 Paper or Monitor Clipper in 2005 after that expired?

6 A We were perfectly fine with them being a consultant. This
7 paragraph envisions the fact that after that period of time
8 they were free to consult with competitors. But we were very
9 insistent that the confidentiality of our work, the information
10 that we shared about the industry, the information that they
11 helped pull together, all of that information was deemed to be
12 confidential and would not be used in that setting. So they
13 were free to consult but they were not free to share our
14 information with others.

15 Q Or their conclusions?

16 A Or their conclusions or any of the work that we
17 collectively did with the BMR, they were not free to use that
18 information.

19 Q So turning to the fall of 2005 did it come to your
20 attention that Monitor Clipper was involved in the acquisition
21 of Recycled Paper?

22 A Yes.

23 Q Were you concerned?

24 A Very concerned.

25 Q Why?

1 A We were concerned because we had done a great deal of work
2 with Monitor and we were concerned about the confidentiality of
3 our information falling into the hands of a competitor.

4 Q Did you do anything about it?

5 A Yes, we did.

6 Q What did you do?

7 A Our general counsel Brian Gardner wrote a letter to
8 Monitor and he asked them to give him assurances that our
9 information would not and has not been shared with Monitor
10 Clipper. He also asked them to return all of the work product
11 and the information they had back to us. And he asked Monitor
12 to retain the information so that it would not be lost and he
13 instructed them to let Monitor Clipper know that they should
14 also retain the information.

15 Q Now, if they were going to return all the information to
16 Hallmark what would they retain? You mean like e-mails and
17 things like that?

18 A Yes.

19 Q Is that last thing you referred to, I think was referred
20 to in opening by Mr. Manchel as a litigation hold?

21 A Yes.

22 Q Are you familiar with that term?

23 A Yes, we are.

24 Q When Mr. Gardner sent this letter out did Hallmark
25 initiate a litigation hold?

1 A Yes, we did.

2 Q Did you get Monitor to return all Hallmark's materials?

3 A They were very slow to respond.

4 Q What was the basis for you asking them to return all the
5 materials?

6 A Well, the contract was very clear in terms of the fact
7 that it was our information and that we could ask for it to be
8 returned.

9 Q Could we go to page 5, Exhibit D227, please, and paragraph
10 9.

11 We looked at this earlier. The third sentence, we
12 looked at the first two. Then the third sentence says, all
13 Hallmark data shall be returned within 30 days of the exit
14 interview with Hallmark project manager if requested. Do you
15 see that?

16 A Yes.

17 Q Did you request that they return everything within 30 days
18 of the end of the project in 2002?

19 A No, we didn't.

20 Q Why not?

21 A We knew it was confidential. We knew it was protected.
22 We -- it's typical that you would after an extensive evaluation
23 like that may continue to have a consulting relationship in the
24 future. But we did not have any concerns that that information
25 would be jeopardized because we had a very clear understanding

1 about the confidentiality of the information that they
2 possessed.

3 Q Did you trust Monitor?

4 A We absolutely did.

5 Q So when you did not receive the documents and materials
6 back, as you put it, promptly enough or quickly enough what did
7 Hallmark do?

8 A We filed an arbitration to compel them to give us back our
9 information.

10 Q That was in January of 2006?

11 A Yes, I believe so.

12 Q Did you also file a claim against Monitor Clipper at that
13 time?

14 A No, we didn't.

15 Q Why not?

16 A We had a contractual arrangement with Monitor that clearly
17 specified their information and we had no reason to believe
18 that Monitor Clipper at that point had any of that information.
19 We had been told that Monitor Clipper did not receive any of
20 that information and our action was against Monitor Consulting,
21 Monitor Group because of the clarity of our contract.

22 Q When you say you've been told Monitor Clipper did not
23 receive any, are you referring to a statement by Monitor
24 Clipper's lawyer?

25 A Yes. Monitor Clipper gave us that statement and we relied

1 on it.

2 Q And the arbitration concluded in March of 2007. As a
3 result of that did Hallmark get all of its materials returned?

4 A Eventually, I think.

5 Q Monitor was required to search for and return most of it?

6 A They had to go through an extensive search over a period
7 of time to produce that information and send it back to us.

8 Q Now, when the arbitration concluded did Hallmark have
9 further contact with Clipper?

10 A Yes. We continued to insist that our Hallmark information
11 was confidential and that they should neither receive it or
12 have access to it.

13 Q I'm sorry. With Clipper, did you ask them to see if they
14 had received any?

15 A Yes, we asked them. And they affirmed that they did not
16 have any information.

17 Q Now, Hallmark claims in this case that in August of 2005
18 while investigating whether to purchase Recycled Paper,
19 Mr. Doctoroff and Clipper and their team received these five
20 confidential BMR reports that you just discussed. When did you
21 become aware that Clipper had received these documents in
22 August of 2005?

23 A Well, shortly after that.

24 Q I'm sorry. Shortly after August of 2005?

25 A No. No. We learned of it when the search process --

1 Q At Monitor?

2 A -- was completed at Monitor Group, we learned that some of
3 those documents had been shared with Monitor Clipper.

4 Q That would be some time in the summer of 2008?

5 A Yes.

6 Q And when was the lawsuit filed?

7 A Just shortly thereafter, a couple months after we learned
8 that those documents had been shared with Monitor Clipper.

9 Q Now, did you authorize the lawsuit?

10 A Yes, I did.

11 Q Why did you authorize Hallmark to sue Monitor Clipper?

12 A Well, as soon as we learned that the information from our
13 BMR was shared with Monitor Clipper, we filed the lawsuit.

14 Q Now, I'd like to turn briefly, before we conclude, to the
15 issue of injury. Okay?

16 A Yes.

17 Q How would Hallmark be injured in 2005 if these
18 compilations, these five compilations that we've been
19 discussing fell into the hands of a competitor?

20 A Well, these compilation in our BMR were the distillation
21 of all of our knowledge about the consumer, the market place,
22 the customers. And it was the most important things that we
23 thought that would guide our strategy for the future. So it
24 contained information about the customer and consumer and our
25 costs and, importantly, the strategy that we used going

1 forward. And if that were in the hands of a competitor it
2 would give them a great deal of insight into our business and a
3 great deal of insight as to how to be more competitive with us.
4 If they shared it with a customer, it could jeopardize our
5 ability to do business with them and be effective. So it had
6 great importance to us. In 2005 it was still a very important
7 body of work. It was still the underpinning of our strategy
8 for the future just as it is today.

9 Q First two sentences. The end of the first sentence is,
10 with all the project work Hallmark data belongs to Hallmark.
11 Do you see that?

12 A Yes.

13 Q Has Hallmark ever considered licensing this stuff to
14 another party?

15 A No.

16 Q Granting the right to use it?

17 A No, we have not.

18 Q Would you ever do that?

19 A Absolutely not.

20 Q Now, we've also heard some statements about Hallmark
21 sharing this information. Can you tell us what the Greeting
22 Card Association is?

23 A The Greeting Card Association is a group of some of the
24 manufacturers of greeting cards. We have a trade association
25 where we get together and talk about things that are of common

1 interest to us, things like postal issues and things like that
2 that are common for the entire industry. And we try to develop
3 an industry-wide perspective to encourage the use of greeting
4 cards or to help the citizen mailer.

5 Q Have you ever considered sharing these compilations in
6 their entirety with the Greeting Card Association?

7 A No. We would not share the compilations from our BMR with
8 an outside group, much less a trade group.

9 Q Do you share some information with the Greeting Card
10 Association?

11 A There are some bits and pieces from our research and from
12 this that we have deemed to be useful to us as we think about
13 growing our business. And we have from time to time shared
14 those little bits and pieces. But when it really advantages us
15 and only after we consciously make that decision that we want
16 to share it.

17 Q So, Mr. Hall, finally, has Hallmark ever shared these five
18 compilations with anybody outside of Hallmark?

19 A No. No.

20 MR. AISENBREY: That's all I have, Your Honor.

21 THE COURT: Cross-examination?

22 MR. MANCHEL: Your Honor.

23 THE COURT: Go ahead.

24 CROSS-EXAMINATION

25

1 BY MR. MANCHEL:

2 Q Good morning, Mr. Hall. My name is Steve Manchel. I
3 represent the defendants in this case. Before I step into some
4 of my prepared questions I'd like to spend a few minutes
5 talking about some of the things you just discussed with your
6 counsel. You talked about the level of information that
7 Hallmark shared with Monitor during the BMR, correct?

8 A Yes.

9 Q And you talked at length about in particular the
10 information about customer terms that Hallmark had, retailers
11 and vendors and the like, correct?

12 A Yes.

13 Q And your testimony was that that is information that you
14 believe is very confidential and you wouldn't want it known
15 outside of Hallmark, correct?

16 A Yes.

17 Q Isn't it true, sir, that there's absolutely no evidence
18 that Hallmark has that any customer terms or terms of sale was
19 ever disclosed to Clipper or RPG?

20 A I don't know. I don't know what has happened to them, the
21 information from BMR.

22 Q You don't know what has happened?

23 A I don't know what Monitor Clipper has done with that
24 information, who they've shared it with, who has that
25 information or what they've done with it.

1 Q Let me be clear, sir. Isn't it true that there's no
2 evidence in this case that Clipper ever received any terms of
3 sale between Hallmark and its retail clients?

4 A I don't know the specific documents and pieces that were
5 shared but I do know that elements of the BMR were shared with
6 Monitor Clipper and that information is confidential.

7 Q So you are the individual who authorized the lawsuit,
8 correct?

9 A Yes.

10 Q Your view is that you believe there were elements of the
11 presentations that were shared with Clipper, correct?

12 A Well, there were components, important components out of
13 the BMR that were shared and when we discovered that, that's
14 when I authorized the lawsuit to protect our information.

15 Q And one of the components of the BMR that you discussed
16 with the jury on direct was the terms of sale that Hallmark has
17 with its customers, correct?

18 A That would have been one of the pieces of information,
19 that's correct.

20 Q And, in fact, that was never shared with Clipper, isn't
21 that right?

22 A I don't know.

23 Q I just handed you, sir, Defendant's Exhibit 1270. These
24 are the responses that Hallmark gave to my clients about, among
25 other things, what is at issue in this case. And I would ask

1 you, please, first of all, do you know that Hallmark provided
2 my clients with these answers, sir, these interrogatory
3 responses?

4 A I know that once I heard that our BMR was compromised and
5 that Monitor Clipper had in their possession some of our
6 information from the BMR, I authorized us to proceed to protect
7 that information. I was not involved in the development of the
8 legal actions that took place. I've not seen this document. I
9 left that up to our lawyers to develop the argument and to
10 pursue our rights.

11 Q Sir, would you do me a favor and turn to page 24 of
12 Defendant's Exhibit 1270. If you look at the first two lines,
13 this is the question that was asked of Hallmark.

14 If you contend that the Clipper defendants used,
15 disclosed, converted or misappropriated any of Hallmark's terms
16 of sale with any retailer then we ask you to answer a bunch of
17 question.

18 If you turn to page 25. This was Hallmark's answer.

19 Highlight the top portion, please.

20 Subject to and without waiving these objections and
21 its general objections Hallmark's states that while Monitor had
22 access to Hallmark's terms of sale, Hallmark has no evidence at
23 this time that Clipper received any of Hallmark's terms of sale
24 with Hallmark's customers. Do you see that, sir?

25 A Yes.

1 Q Do you believe that to be a true statement?

2 A I'm sure at the time that that's, reviewing the documents
3 that would be a true statement.

4 Q Sir, this is from March of this year. Do you believe it's
5 a true statement?

6 A Yes.

7 Q So all of the testimony that you gave the jury on your
8 direct about all of the terms of sale and the customers and the
9 poker analogy, none of that has anything to do with this claim,
10 isn't that right?

11 A No. The information that we used in developing our
12 strategy, the BMR, contained all of the information that we had
13 about every aspect of our business. We completely laid open
14 all of the information in our business and then from that
15 determined what our strategy would be going forward. The BMR
16 is a reflection of our strategy taking into account all of that
17 information. We were very concerned about losing the
18 compilation of all of the information and the description of
19 our going forward strategy.

20 Q Would you put up Plaintiff's Exhibit 487, please?

21 This is one of the presentations at issue in this
22 case, isn't it, sir?

23 A Yes, it is.

24 Q And this is the OEC presentation, correct?

25 A Yes.

1 Q And the OEC presentations for the BMR project were
2 prepared by Monitor, correct?

3 A Yes, they were.

4 Q This is one of scores of presentations prepared by
5 Monitor, isn't that right?

6 A Yes.

7 Q So my question to you, sir, is, I appreciate the fact that
8 Hallmark shared a lot of information with Monitor. But in this
9 case with Clipper, the issue is, is Hallmark asserting that
10 Clipper misappropriated and took terms of retail sales?

11 A You're asking about a particular legal point in a legal
12 document. If I may, I would like to just point out what my
13 concerns are. My concerns are that the BMR was the compilation
14 of our entire strategy. It was the knowledge that we had about
15 the business. It was everything we knew that's important to
16 our future. We laid that out in the BMR documents and this was
17 a very significant one. This would have been 75 to 100 pages
18 long. It was outlining some of the summary conclusions that we
19 were reaching about the critical strategy that we had going
20 forward. And none of that information should have been in the
21 hands of Monitor Clipper.

22 MR. MANCHEL: Your Honor, move to strike.

23 THE COURT: It's non-responsive. I'll sustain.

24 MR. MANCHEL: Thank you, Your Honor.

25

1 BY MR. MANCHEL:

2 Q Now, sir, how many presentations are actually at issue in
3 this case?

4 A Well, in terms of number of presentations I know that
5 these, you mentioned there were scores. There would have been
6 four or five very, very significant summary descriptions of our
7 business. And this would have been one of those handful of
8 presentations that would have been the compilation of our
9 strategy.

10 Q Sir, can you tell this jury how many presentations
11 Hallmark is claiming was misappropriated by my clients?

12 A I don't know.

13 Q Can you tell this jury specifically what was in the
14 presentations that Hallmark claims were misappropriated by my
15 clients?

16 A I don't know the specific documents that Monitor Clipper
17 had in its possession.

18 Q You also said at one point in response to your counsel's
19 questioning that you viewed whatever was taken as the secret
20 sauce of Hallmark. Those are the words you used, correct?

21 A Yes.

22 Q Then you said you were asked in response to a question but
23 Hallmark left the secret sauce behind at Monitor, isn't that
24 right?

25 A Yes.

1 Q And you said, your words were, it's typical for Hallmark
2 or for a company that hires a consultant to leave confidential
3 information behind, is that right?

4 A Yes. It's not unusual.

5 Q So Hallmark left, well, let me ask you this. How do you
6 know, sir, it's not unusual if this is the first such project
7 Hallmark did with a consultant such as Monitor, how do you know
8 that's usual?

9 A I don't know.

10 Q So you don't know it's usual, correct?

11 A Well, I know that often you develop long term
12 relationships with consultants. But none of that mattered
13 because we had confidence based on the contractual outline that
14 that was going to be, that confidentiality would be maintained.

15 Q So let's be clear. You don't know if it's usual for a
16 company to leave behind its secret sauce with a consultant when
17 the work is done, is that correct?

18 A I don't know if it's usual. I know it's not unusual.

19 Q And your company decided to leave this secret sauce behind
20 with an entity, Monitor, that your company had given permission
21 to work with competitors after two years, correct?

22 A Yes.

23 Q Did you have any concerns at all?

24 A No.

25 Q Well, then let me ask you, sir, if Hallmark didn't have

1 any concerns about information being left behind, why did
2 Hallmark in its contract with Monitor insist that Hallmark be
3 able to take back within 30 days all Hallmark related material?

4 A We wanted to make sure that we had access and clear claims
5 over that material.

6 Q Well, it wasn't claims or access, sir. The contractual
7 provision was you would take it back and there would be nothing
8 in the hands of Monitor, isn't that right?

9 A Yes.

10 Q In fact, let's take a look now at Defendant's Trial
11 Exhibit 1264, please. This is the contract as we just looked
12 at it that was signed between Hallmark and Monitor, correct?

13 A Yes.

14 Q And this is dated as of December 5, 2001, correct?

15 A Yes. I assume it's the same as D227.

16 Q Yes. If you turn, please, to page 5, paragraph 9.

17 A Yes.

18 Q Your attorney took you through this paragraph. Do you
19 recall that, sir?

20 A Yes.

21 Q You looked at the first sentence about all data and
22 information submitted to Monitor, do you see that language?

23 A Yes, sir.

24 Q That sentence I believe you said with your counsel on
25 direct that sentence, in fact, covers the presentations that

1 are at issue in this case, correct?

2 A Yes.

3 Q Then if you drop down a few sentences toward the bottom,
4 it says within 30 days. The sentence begins, all Hallmark
5 data.

6 If you would highlight that sentence, please, Jeff.

7 This reads all Hallmark data and all copies supplied
8 shall be returned within 30 days of the exit interview with
9 Hallmark project manager, if requested. Correct?

10 A Yes.

11 Q And there was never a request by Hallmark for the return,
12 was there, sir?

13 A No, there wasn't.

14 Q Would you, please, put up, Jeff, Defendant's Trial Exhibit
15 578.

16 This, sir, is Monitor's final recommendation,
17 correct?

18 A I believe so.

19 Q And the date of it is June 2002, correct?

20 A Yes.

21 Q This is the culmination of the BMR work, correct?

22 A Yes.

23 Q So three years after the BMR work ended, Hallmark had
24 still not asked back for any of its supposedly confidential
25 information, correct?

1 A No.

2 Q No, I'm wrong or no, it had not?

3 A I'm sorry. No, it had not. We had not asked for that
4 information back.

5 Q Would you put up, please, Jeff, Defendant's Exhibit 1268.

6 Now, this is the letter that Hallmark sent demanding
7 back the return of all Hallmark related information, correct?

8 A Yes.

9 Q And it was sent in November of 2005, correct?

10 A Yes.

11 Q And it was sent to Monitor, correct?

12 A Yes.

13 Q You understand Monitor is not --

14 A Monitor Group.

15 Q Monitor is not the defendant in this case, correct?

16 A It was sent to Monitor group, the consulting arm.

17 Q Well, consulting arm, sir, or consulting company?

18 A Consulting company.

19 Q You understand they're two legally different entities,
20 don't you, sir?

21 A Yes.

22 Q Now, in this demand letter that's sent by the general
23 counsel of the company, Brian Gardner, if you look at the top,
24 is that right?

25 A Yes, it is.

1 Q And the letter as we see right at the top is a demand for
2 the return of all Hallmark related documents, correct?

3 A Yes.

4 Q Let's take a look at the first sentence.

5 First sentence reads, we were shocked to learn that
6 you are entering into direct competition with Hallmark Cards
7 after you obtained Hallmark's most confidential core business
8 trade secrets through an intimate consulting relationship under
9 which Hallmark paid you millions of dollars.

10 Do you see that language, sir?

11 A Yes.

12 Q And the direct competition that Monitor was entering into
13 concerned RPG, correct?

14 A Yes.

15 Q And the reason that Hallmark sent this letter, sir, is
16 because of the intimate consulting relationship that Monitor
17 had had with Hallmark, correct?

18 A Yes.

19 Q Hallmark was shocked that Monitor would even do business
20 with RPG, isn't that right?

21 A We were very concerned that we were shocked, yes, but we
22 were very concerned about losing the information that was
23 developed in the BMR.

24 Q Well, you don't say that in the first sentence, do you,
25 sir?

1 A No, it's not listed there.

2 Q All it says is you're shocked to learn that Monitor would
3 even do business with RPG after having had an intimate
4 relationship, correct?

5 A That's what that sentence says, yes.

6 Q Was it true?

7 A We were shocked to hear that the acquisition was going
8 forward and we were very concerned about the confidentiality,
9 maintaining the confidentiality of our information.

10 Q But Hallmark had a deal with Monitor that after two years,
11 even though Monitor had an intimate consulting relationship
12 with Hallmark, Monitor could work with competitors, right?

13 A That's correct.

14 Q Let's go back to Defendant's Exhibit 1264, please, Jeff.

15 Go to page 7, please. If you highlight the conflict
16 paragraph, please.

17 This was the deal that Hallmark struck with Monitor
18 about when Monitor could work with competitors, correct?

19 A Yes.

20 Q The deal was that despite the fact, even though Monitor
21 had an intimate consulting relationship with Hallmark, Monitor
22 could, in fact, go out and help Hallmark competitors after two
23 years, correct?

24 A That's correct.

25 Q And, in fact, Hallmark agreed further that Monitor could

1 do that specifically with RPG, isn't that right?

2 A Yes.

3 Q Take a look at page 8, please, we see the language. That
4 identifies specifically RPG.

5 Can we go back, please, Jeff, to the demand letter,
6 Defendant's Trial Exhibit 1268.

7 In the fall of 2005, and I believe you said this in
8 response to your counsel's questioning, RPG was a chief
9 competitor of Hallmark, isn't that right?

10 A That's correct.

11 Q In fact, it was one of the leading competitors in the
12 market place, Hallmark's second most important competitor,
13 correct?

14 A That's correct.

15 Q And in 2005 Walgreens was one of Hallmark's top customers,
16 isn't that right?

17 A Yes.

18 Q And at Walgreens RPG was Hallmark's primary competition,
19 isn't that right?

20 A Yes.

21 Q In fact, isn't it true, sir, that in the summer of 2005
22 Hallmark learned before this letter was sent, Hallmark learned
23 that Walgreens had decided to give RPG floor space in over 1200
24 of its stores?

25 A Yes.

1 Q And that floor space was going to be used to replace Shoe
2 Box, isn't that right?

3 A I believe so.

4 Q Show Box is Hallmark's humor card, correct?

5 A Yes.

6 Q So before this letter was sent, Hallmark found out, by the
7 way the replacement at Walgreens by RPG had nothing to do with
8 Monitor or Clipper, correct?

9 A I'm sorry. Could you repeat the question?

10 Q Walgreens' decision to replace Shoe Box at 1200 stores had
11 nothing to do with Monitor or Clipper, correct?

12 A Yes.

13 Q Now, you were copied on this letter, weren't you, sir?

14 A Yes.

15 Q And if you go to the signature page, please, Jeff.
16 Highlight the folks who were copied.

17 That's you on the top, right?

18 A Yes.

19 Q The next individual, David Hall, that's your brother?

20 A Yes.

21 Q What position did your brother hold in 2005, do you
22 remember?

23 A I'm trying to remember. It was about in that time I think
24 he was in charge, at that point he was the president of North
25 America.

1 Q And this year, sir, what position does he hold?

2 A Pardon me?

3 Q What position does David Hall hold at this time?

4 A He's the president of North America.

5 Q Did either of you -- well, strike that. Did you read this
6 letter before it was sent out?

7 A No. I don't think so.

8 Q You didn't see this letter at all?

9 A I don't recall seeing it before it went out. I was very
10 well aware of our concerns about losing information to a
11 competitor.

12 Q Did you see this letter some time, obviously, after it
13 went out?

14 A Oh, yes.

15 Q Do you recall when you first saw it?

16 A I don't.

17 Q Go back to the first sentence, please, Jeff.

18 When you read this letter for the first time did you
19 say to anybody hold on a minute. Monitor is allowed to work
20 with Clipper. This sentence reads that Monitor can't work with
21 RPG, that's not right. We're only concerned about confidential
22 information. Did you say anything along those lines?

23 A I'm sorry. The question again?

24 Q When you read this, this opening sentence of demand?

25 A Uh-huh.

1 Q Did you say, well, excuse me, Mr. Gardner, we can't tell
2 them we're shocked to learn, just that they're working with the
3 competitor because that's the deal. We need to tell them we're
4 concerned about confidential information. Did you say that or
5 words to that effect?

6 A That was our focus was making sure that the information
7 that was contained in the BMR did not fall into the hands of --

8 Q Why doesn't it say that there then?

9 A I didn't write the letter.

10 Q Well, sir, in fact, the focus was to stop Monitor, period,
11 from working with RPG, isn't that right? That's what Hallmark
12 wanted to stop, wasn't it?

13 A We wanted to make sure that the information that was
14 contained in the BMR was protected because we understood how
15 damaging the loss of our trade secrets would be if it went to a
16 competitor.

17 Q Would you turn now, Jeff, please, to page 2 of this
18 letter? Would you highlight the portion for the jury, please,
19 that goes from pages 2 to 3?

20 This reads, most disturbing of all is information
21 revealed on Monitor Clipper dot com including but not limited to
22 the following. Monitor Clipper leverages its close
23 relationship with Monitor with respect to day-to-day operating
24 issues as well as long term company strategic positions.
25 Monitor Clipper's tight strategic relationship with Monitor's

1 industry experts allows it to quickly understand and analyze a
2 wide variety of industries and that Monitor Clipper actually
3 identifies a substantial number of potential investments
4 through Monitor's business relationships and through
5 initiatives to target industries where Monitor has significant
6 knowledge and expertise.

7 Do you see that language, sir?

8 A Yes.

9 Q That's what the general counsel of Hallmark wrote to
10 Monitor in November 2005, correct?

11 A Yes.

12 Q This was what was most disturbing for Hallmark, correct?

13 A Yes.

14 Q But Hallmark knew before this letter was ever written
15 exactly what the relationship was between Monitor and Clipper,
16 isn't that right, sir?

17 A No, we didn't.

18 Q Well, sir, Hallmark has a unit called Party Express, isn't
19 that right?

20 A Yes. We did, yes.

21 Q In 2005 you did, didn't you, sir?

22 A Yes.

23 Q And earlier?

24 A Yes.

25 Q And Party Express was a supplier of party products,

1 correct?

2 A Yes.

3 Q Some time around the year 2000 Hallmark was approached by
4 a company called Am Scam, isn't that right?

5 A Yes.

6 Q Am Scam was a designer and distributor of decorative party
7 goods, correct?

8 A Yes.

9 Q When that happened, when Am Scam approached Wal-Mart, I'm
10 sorry, approached Hallmark, it approached Hallmark about the
11 possibility of the companies doing a finance deal together,
12 isn't that right?

13 A Yes.

14 Q When that happened what Hallmark did was it reached out to
15 get Clipper involved, didn't it?

16 A I don't know.

17 Q You don't know, sir?

18 A I don't.

19 Q And during all the time that Hallmark worked with Monitor,
20 this intimate consulting relationship with Monitor over two
21 years, is it your testimony, sir, that Hallmark had no idea who
22 Clipper was or what Clipper did or how Clipper was in any way
23 doing business with Monitor?

24 A The sentence did give us some concerns because it
25 referenced that Monitor Clipper aligns with businesses in which

1 Monitor has significant knowledge and expertise. Our concern
2 was the fact that Monitor Group developed their significant
3 expertise because we provided it to them. Because we shared
4 all of the information about the industry that they didn't know
5 before the engagement and that we shared with them very openly
6 all of our information. We were concerned that that expertise
7 that was shared in confidence with Monitor Group would be
8 shared with its partner, Monitor Clipper. That was the basis
9 of our concern. I'm sorry.

10 Q Which is it, sir? Is it information or expertise?

11 A Well, it's the work product that was developed for the
12 BMR. It would be our strategy. It would be the information
13 that we would uniquely have. It would be our trade secrets.
14 It would be the knowledge that we uniquely possess.

15 Q But the expertise that Monitor developed, that Monitor
16 would be free to share, right? I mean people get better and
17 smarter and they learn stuff when they work on a particular
18 project, right?

19 A Yes.

20 Q And Monitor, obviously, must have learned a great deal
21 about the card industry and about Hallmark when working with
22 Hallmark in the BMR, right?

23 A They could consult but they could not share our
24 information.

25 Q That wasn't my question, sir. My question to you was,

1 Hallmark hired Monitor at a point in time when Hallmark knew
2 Monitor had almost no experience in the greeting card business,
3 correct?

4 A Yes.

5 Q But that didn't matter to Hallmark because Hallmark knew
6 that Monitor was good enough to take Hallmark to the next level
7 without any greeting card information at all, correct?

8 A Yes.

9 Q And without any greeting card experience at all, correct?

10 A Yes.

11 Q And without any greeting card expertise, correct?

12 A Yes. If bound with the work that we would provide in
13 terms of the sharing the data and providing the data analytics.

14 Q And a consultant, like anybody else who works with a
15 client for the first time in a new industry, learns things
16 about the industry and gets better and smarter about the
17 industry, right?

18 A Yes.

19 Q And that consultant, Monitor in this case, is absolutely
20 free to share its expertise and its learnings with RPG as long
21 as it doesn't constitute Hallmark confidential information,
22 correct?

23 A Yes.

24 Q But you were asked, sir, on direct by your counsel, I
25 tried to write it down. I think your words were everything

1 that Monitor came to be was owned by Hallmark or words to that
2 effect, is that right?

3 A I don't remember my exact words.

4 Q Is that the gist of it?

5 A The contract provision that the information that we shared
6 with Monitor, the proprietary trade secret information that we
7 shared as part of that development of our BMR, that that
8 information would be maintained as confidential. It also said
9 that any of the work product that was created with Monitor
10 consultants and Hallmark marketing people, that that work
11 product would be maintained as confidential work product.
12 Those were the deliverables. Those were the things that were
13 contained in the BMR and that we wanted to make sure would be
14 maintained as confidential information.

15 Q And you use the word, I want to be really clear here.
16 These are folks being sued. You used the word deliverables.
17 That's the stuff, that's the presentation, correct?

18 A Yes.

19 Q But the expertise, the we're better and we're smarter and
20 we know more about the greeting card, that Monitor is free to
21 share, right?

22 A Free to share consulting expertise, not free to share our
23 information.

24 Q That Hallmark doesn't own, right, the expertise, Hallmark
25 doesn't own, right?

1 A No.

2 Q Now, in fact, you testified, your attorney asked you a
3 question about the Greeting Card Association. Remember that?

4 A Yes.

5 Q It's called in the industry the GCA?

6 A Yes.

7 Q And you said there are times when Hallmark, I tried to
8 write this down. If I don't say it correctly, please let me
9 know. There are times when Hallmark chooses to share with the
10 GCA little nuggets and give the GCA pieces of information,
11 correct?

12 A Yes.

13 Q But, sir, you testified before today that Hallmark never
14 shares information with the GCA, isn't that right?

15 A I don't remember what you're referring to. I think what
16 I've tried to delineate here is that we consciously will share
17 some bits and pieces of research information with the GCA. But
18 it's very consciously decided upon. We do not share the
19 compilation of our strategy, the deep market research, that
20 competitive information contained in the BMR. We do not share
21 that kind of information but we will talk about how many
22 birthdays there are in the country and talk about greeting card
23 sending and things like that in ways that we would hope would
24 be self promotional and informative to driving the business
25 forward.

1 Q Sir, you gave testimony in the arbitration that was
2 between Hallmark and Monitor, didn't you?

3 A Yes.

4 Q And in your testimony under oath in that arbitration did
5 you say, sir, that Hallmark does not contribute information to
6 the GCA?

7 A We do not contribute confidential information to the GCA.

8 Q Would you pull up, please, Jeff, January 8, 2007
9 arbitration transcript, page 183. Highlight, please, lines 3
10 through 10.

11 That's your testimony, sir, under oath. It reads, we
12 do not contribute our information to their sources.

13 Do you see that? Is that, in fact, what you said,
14 sir?

15 A Yes.

16 Q But today you say that you do contribute nuggets of
17 information to the GCA, is that right?

18 A This is, yes, it is.

19 Q And, in fact, sir, Hallmark contributed all sorts of
20 information from these presentations to the GCA, isn't that
21 right?

22 A No. We didn't distribute all sorts of information from
23 the BMR. We may have shared bits and pieces from it with the
24 GCA but we would not share the highly definitive strategic
25 information from the BMR.

1 Q Well, sir, you keep wanting to talk about information from
2 the BMR. I'm trying to talk about the information in just the
3 presentations at issue in this case. My question to you, isn't
4 it true, let's take a step back. Your testimony to your
5 counsel was the information in the presentations in this case
6 was not only confidential in 2005, it is still confidential
7 today, correct?

8 A That's correct.

9 Q My question to you, sir, is, isn't it true that Hallmark
10 shared information in the presentations at issue in this case
11 with the GCA?

12 A It is true that we would have shared parts of the
13 information contained in the BMR with the GCA. It would have
14 been information that we consciously decided was appropriate to
15 share in a public environment like that. But it was not the
16 compilation of the information in the BMR, we would not share
17 that with the GCA.

18 Q When you say consciously made decision, what you mean is
19 Hallmark just decided that some stuff wasn't confidential any
20 more so it would share, correct?

21 A We would determine what was confidential, what would be
22 advantageous for us to share. We would determine what would be
23 disadvantageous for us to share. And we would only share those
24 pieces that would be of interest in hoping to elevate the usage
25 of greeting cards. So we will from time to time share how many

1 birthdays there are in the United States because that always
2 generates some human interest stories and those kinds of things
3 help remind people about the benefits of sending cards.

4 Q Isn't it true, sir, that Hallmark decided before my
5 clients supposedly ever misappropriated these presentations,
6 Hallmark decided that it was in Hallmark's interest to share
7 information from the presentations with the GCA, isn't that
8 right?

9 A We did share some of the information with the GCA.

10 Q And the GCA is a trade organization that Hallmark's
11 competitors belong to, correct?

12 A Yes.

13 Q And, in fact, Hallmark shared information from the
14 presentations that are at issue in this case in a presentation
15 to the GCA at which American Greetings attended, isn't that
16 right?

17 A Yes.

18 Q Would you put up, please, Defendant's Trial Exhibit 589?

19 Mr. Hall, I'll represent to you this was the document
20 that was produced to us by the GCA. Do you see the little
21 numbers on the bottom?

22 A Yes.

23 Q So this is a document that the GCA had, not that we had,
24 that was produced to us. Okay?

25 A Yes.

1 Q Now, if you turn, the top of this document, the cover page
2 right here, that's the Hallmark symbol, correct, Hallmark
3 Crown?

4 A Yes, it is.

5 Q It's entitled Category Growth Initiative, Greeting Card
6 Association, correct?

7 A Yes.

8 Q Turn to the second page, please. Business problem. Some
9 segments of consumers are choosing alternate forms of
10 communication particularly among women 45 and older. Do you
11 see that?

12 A Yes.

13 Q That is exactly the conclusion that was in one of the
14 presentations supposedly at issue in this case, isn't it?

15 A Yes.

16 Q That's one of the core conclusions supposedly of the BMR
17 worth in the presentations in this case, correct?

18 A It was information, yes, it is but it's information that
19 was central to a strategy that we had to try to reach the age
20 women --

21 Q We'll talk about the strategy in this minute. Let's stick
22 with the information. So this jury understands, when this
23 presentation was made to the Greeting Card Association that
24 information came from what you claim is still secret as of
25 today, isn't that right?

1 A It came from the BMR. It was part of the research that
2 was developed and the BMR is still very important today.

3 Q I understand it's important but this part of the BMR is no
4 longer secret, is it, sir?

5 A No.

6 Q Now, would you turn to page 3? This comes right out of
7 the presentations at issue in this case, too, doesn't it, sir?

8 A Yes.

9 Q So consumers have many communication choices. That's a
10 conclusion you claim is in the presentations that's still
11 secret today, right?

12 A Yes.

13 Q How can it be secret, sir? It's been given to the
14 Greeting Card Association. How is it secret?

15 A It's, the work around the BMR was to develop a strategy
16 that we could act on. It was not to develop a beautiful
17 presentation report that would go on a shelf. It was to form
18 our actions. One of the things that we thought was very
19 important was that women over 45 needed to be re-engaged. We
20 thought it would be helpful for us as an industry group to be
21 able to put more emphasis around women over 45. Because
22 getting women over 45 more engaged in the greeting card sending
23 was to our advantage. We would have gone very carefully
24 through the BMR and extracted those couple nuggets and shared
25 them consciously with the trade association because we thought

1 it was to our advantage. That's the reason we spent those many
2 months with that much effort and that much cost to develop
3 something that we could act on. It was something that we could
4 actually do and help drive participation in greeting cards. We
5 thought this was important for the association, all of us,
6 collectively, to have a better understanding. We did not go
7 underneath this and describe a lot of the actions that are very
8 proprietary to us or the information that led us to these
9 conclusions. We skimmed along the surface and only touched on
10 those things that we thought could engage them in a productive
11 way to drive the consumption of greeting cards.

12 Q Sir, you even revealed to the GCA the strategies that came
13 from these issues, didn't you? Didn't you?

14 A Yes. We revealed some of the things that we wanted them
15 to act on, that we thought would be beneficial to us and to the
16 industry.

17 Q Go to the next slide, please. You even told your
18 competitors about the research that supposedly is at issue in
19 this case, isn't that right?

20 A We told them, yes, we told them what we wanted them to
21 know.

22 Q So conducted research in late 2001. The research that
23 Hallmark does is the diary study, correct?

24 A Yes.

25 Q So you're revealing to your competitors the results of

1 diary study research, isn't that right?

2 A Yes, on a very summary and purposeful level.

3 Q It's not -- the second bullet point, they don't believe
4 they are substituting new forms of communication for cards.
5 That comes from the diary study, doesn't it?

6 A Yes.

7 Q Then the next bullet point. When pressed, they admitted
8 to occasionally forgetting. That comes from the diary study
9 research, right?

10 A Yes.

11 Q Next bullet. Asked us to remind them of the benefits.
12 That comes from it, right?

13 A Yes.

14 Q Now, as I said before, Hallmark even revealed the
15 strategy, if you go to the next slide. Look at the second
16 bullet point, sir. You told, Hallmark told its competitors
17 that it needed to create an advertising campaign that the
18 emotional benefits of sending a card, only a greeting card can
19 deliver the emotional impact. Do you see that?

20 A Yes.

21 Q That's the heart of the BMR work, isn't it, sir?

22 A It's a small part of the BMR.

23 Q A small part?

24 A We were trying to encourage our competitors in the
25 industry to lean into the benefits of card sending and to lean

1 into the reminders for people to send cards. We didn't feel
2 that the others were doing as much to remind people and to
3 remind people of the benefits or remind people of the emotional
4 qualities and we wanted them to do that. We outlined the fact
5 that we were doing our part to try to give people reasons to
6 send greeting cards. We were very careful not to describe our
7 strategy around that campaign because in addition to getting
8 people to want to send more cards, we, of course, want people
9 to send more Hallmark Cards. So our strategy that's contained
10 in the BMR would be very precise and much more descriptive of
11 how we were going to approach this in ways that was beneficial
12 to us. But we also realize that it's healthy for the entire
13 industry, if people were to re-engage the card enthusiasts over
14 the 45-year age group.

15 Q Sir, you didn't decide that. Hallmark was told that by
16 Monitor as part of the central conclusions of the BMR, isn't
17 that right?

18 A That was, the BMR was the compilation of our best thinking
19 and Monitor's best consulting.

20 Q Monitor's advice to you, sir, at the heart of the BMR was
21 to go out and get everybody to sell more cards, don't go out
22 and just tell them to buy Hallmark, isn't that right?

23 A That was, that was a central theme but that's not --

24 Q And that's why and that's why Hallmark was making this
25 presentation at the GCA because Monitor told you don't create

1 advertising that just talks about Hallmark, create advertising
2 that will lift the whole category, isn't that right?

3 A That was part of the conclusions that we reached.

4 Q And those conclusions were the conclusions that were in
5 the presentations at issue in this case, isn't that right?

6 A Yes. That was part of it.

7 Q And those conclusions weren't secret. They were public,
8 long before 2005 came along, isn't that right?

9 A No. The conclusions of the BMR were not made public.

10 Q The conclusion of the BMR was, you, Hallmark, should have
11 advertising that floats the whole category, not Hallmark,
12 correct?

13 A That was one of the points.

14 Q That's it, right there, isn't it?

15 A Yes.

16 Q Can we go to the next slide, please?

17 Then you told them, your competitors, the songs that
18 you were going to use at Hallmark to raise the category, isn't
19 that right, to deal with emotion, right?

20 A Yes. We were previewing a campaign that we were about to
21 launch.

22 Q And the campaign was the Remembering Campaign, correct?

23 A Yes.

24 Q Go to the next slide, please.

25 And that Remembering Campaign was the direct result,

1 as you were just shown, of Monitor concluding for Hallmark that
2 Hallmark needed to focus on emotions and women over 45 needed
3 to be targeted and the whole category needs to be lifted,
4 correct?

5 A Yes.

6 Q Those are the some of the central conclusions contained in
7 the BMR, isn't that right?

8 A Yes.

9 Q Defendant's Trial Exhibit 270, please, Jeff.

10 Sir, this was the agenda for the presentations. This
11 is another document that was given to us by the Greeting Card
12 Association.

13 Jeff, would you turn, please, to page 3.

14 Your Honor, while he's doing that, may I raise an
15 issue? I'm not moving each time for introduction of these
16 exhibits because they're all stipulated to and I believe we
17 deem them to be admitted. But if the Court wants me to I'll
18 say it each time but I think we've crossed that bridge.

19 THE COURT: I'm comfortable with that.

20 MR. MANCHEL: Thank you, Your Honor.

21 BY MR. MANCHEL:

22 Q Would you look, please, at the entry for 11 am to 11:45.
23 Jim Welch at the time was a senior officer at Hallmark,
24 correct?

25 A Yes, he was.

1 Q And his presentation to the GCA was, "What do we know
2 about today's consumer?" Correct?

3 A Yes.

4 Q This is just months after the BMR project finished, isn't
5 that right?

6 A Yes. Right. What was the date?

7 Q Go to the first page, please, Jeff. Highlight the date,
8 please.

9 It's a little hard to read.

10 A October of 2002.

11 Q So October of -- the BMR ended in 2002, correct?

12 A The final report was issued in June of 2002.

13 Q Would you pull up, please, Jeff. Strike that.

14 Would you pull up Plaintiff's Trial Exhibit 487, page
15 93. This is one of the presentations at issue in this case,
16 isn't it, sir?

17 A Yes, it is.

18 Q It's part of what Hallmark claims was still secret in
19 2005?

20 A Yes.

21 Q The information in it?

22 A Yes. The compilation of all of that information.

23 Q I want to be clear, sir. Your claim is, Hallmark's claim
24 is the information in this that's still secret, right?

25 A Yes. I'm saying that the compilation of that information

1 is our secret sauce. There are pieces of it that are public.
2 There are pieces of it that we've chosen to share. But it's
3 the compilation that constitutes our strategy.

4 Q Well, sir, you keep saying compilation. Have you actually
5 read these presentations recently?

6 A No. I've looked at them but I haven't read through them
7 recently.

8 Q So do you know that, in fact, there are sections, like
9 there is a section on dinnerware and there is a section on
10 stationery. There is a section on women over the age of 45
11 being targeted. Did you see those things? Do you remember
12 that?

13 A Yes.

14 Q So when you say compilation, it's kind of like chapters in
15 a book. Is that fair?

16 A It's the entire book.

17 Q I understand. So if I went into the library I wouldn't
18 find this on a shelf, correct? That's the book, right?

19 A Yes.

20 Q But there are plenty of places I could find the chapters
21 in stores, isn't that right?

22 A No.

23 Q Well, let's take a look. Let's turn, please, Jeff, if you
24 turn to page 99. Highlight the language under the bar, please.

25 That's just what we saw at the Greeting Card

1 Association, isn't it?

2 A Yes.

3 Q So this chapter has been disclosed, right?

4 A That's a sentence in a paragraph of a chapter. It's not
5 the chapter.

6 Q Okay. We'll look at more. Would you turn to slide 19,
7 please, Jeff, which I believe is 111. If you highlight the
8 language on the top, please.

9 That's the message that you have to go out and market
10 fairness and emotion and the like, correct?

11 A Yes.

12 Q Equity heavy messaging, right? So that's been released,
13 too, right?

14 A Not to that degree.

15 Q Not to that degree.

16 Would you turn to slide 22, please, page 114.

17 This was also revealed to the Greeting Card
18 Association that we just saw, isn't that right, sir?

19 A I'm having trouble reading it.

20 Q Can you highlight it, please, Jeff?

21 Next 24 months is to stabilize the market. Right?
22 Marketing efforts are targeting women older than 45, right?
23 Equity advertising. These are all the things we just discussed
24 in the GCA, correct?

25 A No. It's not all of them. We would not have shared the

1 advertising budget. We wouldn't have shown some of that level
2 of detail. The headline might have been what we were trying to
3 encourage the other Greeting Card Association members to do
4 because we know it's healthy for the industry to have
5 information pushing, pushing to the consumer to encourage them
6 to send cards. But we would not tell what our annual
7 advertising budget would be or some of the specific actions.
8 So while the headline may be something we acted on, the rest of
9 it, underneath the headlines, would have been proprietary and
10 we would have been very careful about.

11 Q Sir, you're calling them headlines. Those are the
12 conclusions, right?

13 A Yeah, some of the summary conclusions. But much of what
14 is contained in the BMR would contain a precision of
15 information that we would not want our competitors to know
16 about.

17 Q Well, in fact, sir, you disclosed, Hallmark disclosed
18 precise information from these presentations in newsletters
19 that are available to anybody that walks into the Hallmark
20 building, isn't that right?

21 A We have shared bits and pieces from the BMR to customers,
22 to the industry, to consumers, when we have felt that those
23 pieces of information would be helpful on us acting on our
24 strategy.

25 Q Let me ask you a question. As of 2005 what percentage of

1 bits and pieces of the five presentations at issue have been
2 disclosed? Do you know?

3 A I don't know. But I do know that --

4 Q But we do know, sir, that as of 2005 as we've just seen
5 and we're going to go look at the newsletters, a hundred
6 percent of the presentations at issue in this case weren't
7 secret, isn't that right?

8 A That's correct.

9 Q Now, if you take a look, please, at Defendant's Exhibit
10 267. This is Hallmark's daily news information sheet, correct?

11 A Yes.

12 Q Newsletter?

13 A Yes.

14 Q Called the Noon News?

15 A Yes.

16 Q Thousands and thousands of copies of these are generated
17 and placed around all buildings occupied by Hallmark employees,
18 correct?

19 A Yes.

20 Q In this Noon News letter, folks are being told about the
21 BMR project, correct?

22 A Yes.

23 Q Jeff, just highlight the date for the jury, please, so
24 they can see.

25 This is July 12, 2002, correct?

1 A Yes.

2 Q That's one month after the BMR concluded, correct?

3 A Yes.

4 Q And in this newsletter.

5 Jeff, can you go to about the middle of the column in
6 the center?

7 In this newsletter everyone is being told that
8 there's been a Business Model Redesign work ongoing at
9 Hallmark, correct?

10 A Yes.

11 Q So that's not a secret, right?

12 A No. No.

13 Q And if you turn to, just to the right of that, Jeff.

14 You see, sir, the language, folks were also told the
15 decisions that had been made in the BMR, isn't that right?

16 A They were being told about a change in organizational
17 structure as we were acting on our strategy.

18 Q Well, if you take a look --

19 Jeff, if you would highlight, please, the language
20 that reads summary of decisions to date. Right about there.

21 Women 45 and older who have no children at home will
22 be our target consumers because we've seen a significant drop
23 off in card sending within this group. Do you see that
24 language, sir?

25 A Yes.

1 Q Pretty specific, isn't it?

2 A It's directional. We wanted everybody, all Hallmarkers to
3 work hard against our goal of trying to re-engage the women
4 card senders over 45. That was our primary --

5 Q Sir, Hallmark is revealing a central conclusion contained
6 in the presentations in this case to anyone that walks into
7 Hallmark, isn't that right?

8 A We're revealing an important directional move that we're
9 taking. We don't describe the basis that was contained in the
10 BMR. This is a very high level view which we thought was very
11 important for Hallmarkers working in the business to understand
12 how we were going to shift our area of attention. We wanted
13 artists and writers and product line planners in be clear about
14 what we were trying to do.

15 Q And what you were trying to do came from a conclusion from
16 the presentations that are at issue in this case, correct?

17 A That's correct.

18 Q And let's be specific, women 45 and older. That was one
19 conclusion, right?

20 A Yes.

21 Q Who have no children at home. That's another conclusion,
22 correct?

23 A Yes.

24 Q Will be the target consumers. That's another conclusion,
25 correct?

1 A Yes.

2 Q Because the research, some of the research at issue in
3 this case have shown a significant drop off in card sending in
4 that group, correct?

5 A Yes.

6 Q Clipper and Monitor needed nothing to know stuff like
7 this, isn't that right?

8 A They were part of developing the strategy that helped
9 develop those choices. But below this level of detail or below
10 this conclusion is a lot of detail that is very confidential.
11 But we chose to make this available to all of our employees so
12 that they knew how we were going to try to re-engage the
13 consumer.

14 Q The Noon News isn't confidential, is it, sir?

15 A No. We make it available to all Hallmarkers.

16 Q Well, in fact --

17 A We want everybody to know.

18 Q Anybody who walks into the building can take this out,
19 correct?

20 A Yes.

21 Q Now, you were deposed in this case, sir, weren't you?

22 A Yes.

23 Q And when you were asked the question in this case under
24 oath if the Noon News was confidential, you testified that the
25 Noon News was confidential, didn't you, sir?

1 A I don't remember that but I'll take your word for it.

2 Q No. It's important, sir, because I want to make it clear
3 to the jury that under oath you said, first it is confidential
4 and then today you're saying it's not confidential. So just
5 give me one second, please, and I'll get you the cite.

6 Just give me one moment, Your Honor. Sorry.

7 MR. MANCHEL: Would you go, please, Jeff, to
8 Defendant's Trial Exhibit 269?

9 BY MR. MANCHEL:

10 Q This is another Noon News letter, correct, sir?

11 A Yes.

12 Q And you were asked a question --

13 If you go, please, Jeff, to Mr. Hall's May 11, 2012
14 transcript, lines 8 to 11. Page 208, I'm sorry. Lines 8
15 through 11.

16 "QUESTION: Do you consider this information
17 confidential Hallmark information that's contained in the CEO
18 perspectives?

19 "ANSWER: Yes."

20 Do you see that language, sir?

21 A Yes.

22 Q It's not confidential, is it, sir?

23 MR. AISENBREY: Your Honor, he needs to read the
24 whole answer.

25 THE COURT: Yes. We'll hear the answer.

1 BY MR. MANCHEL:

2 Q Yes. It, the -- the -- the intent of the information
3 isn't to go public. I've not written these columns to go into
4 *The Kansas City Star*. Do you see that?

5 A Yes.

6 Q In fact, sir, that information is not confidential, isn't
7 that right?

8 A No. Well, no, it's not the confidential information of
9 the BMR. We made a conscience decision to engage Hallmark
10 employees by sharing some bits and pieces of the information
11 that was part of the BMR because we thought it was important to
12 have them understand where we're going. And I think when we
13 publish it, we know that there are a lot of copies of that so
14 when we approach it, we know that could fall into other
15 people's hands. So when we decide what goes in there we decide
16 what is appropriate putting in a publication that goes to
17 literally thousands of Hallmarkers who we feel have to have
18 that information to be able to move us along in our strategy.

19 Q Sir, it's a very simple question. Is the Noon News
20 confidential?

21 A It's intended for Hallmark employees but I think we know
22 it's more public than the way we treat other confidential
23 information so.

24 Q Does that mean it is confidential or it isn't
25 confidential?

1 A We consciously make a decision to make that more public by
2 sharing it with Hallmarkers.

3 Q Does that mean it's not confidential?

4 A That sentence is not confidential.

5 Q I'm asking about the Noon News, the document. The Noon
6 News isn't confidential, is it, sir?

7 A No.

8 Q And Hallmark put in the Noon News conclusions and
9 information from the presentations at issue in this case, isn't
10 that right?

11 A We put information in there about some of the conclusions
12 at a very high and conscience level.

13 Q So as a result of the GCA and these Noon News, is it fair
14 to say, sir, that 100 percent of the presentations at issue in
15 this case as of 2005 weren't still confidential?

16 A No. The BMR was still highly confidential.

17 Q Now, you also testified, sir, that, I'm trying to remember
18 this correctly. It was in substance I believe you said that
19 Hallmark didn't want to sue Clipper and relied on Clipper
20 talking to Hallmark about information Clipper might have had
21 and that was the reason why Hallmark entered into the
22 confidential agreement with Clipper, right? Words to that
23 effect?

24 A Yes. We wanted to make sure that our information that was
25 developed with Monitor Group was protected.

1 Q Well, in fact, that's what the deal was all about between
2 Hallmark and Clipper, correct, the confidential agreement?

3 A Yes.

4 Q And Hallmark was really concerned that Clipper might have
5 information, correct?

6 A Yes, we were.

7 Q And so Hallmark struck a deal with Clipper where Hallmark
8 said, in essence, if you let us search for the information, we
9 won't sue you, isn't that right?

10 A Yes.

11 Q And you said in response to a question from your attorney,
12 you said something like when we found out that Clipper had
13 received one of these e-mails, we sued. Do you remember saying
14 that? An e-mail that contained one of the presentations?

15 A Yes.

16 Q That's not when Hallmark sued though, is it, sir?

17 A When we learned that information had been in the receipt
18 of Monitor Clipper we realized then that we had been lied to
19 and that Monitor Clipper had information that was confidential
20 and that's when we decided to sue.

21 Q Sir, do you remember the month this lawsuit was filed in?

22 A I don't.

23 Q If I suggested to you November, would that sound about
24 right?

25 A I'll take your word for it.

1 Q Do you remember when Hallmark learned that Clipper had
2 received one of the e-mails with the information attached to
3 it? Do you remember when that happened?

4 A It was shortly before, a couple months before that.

5 Q Could it have been in June or July, sir?

6 A It was some time in the summer but I can't tell you
7 specifically when it was.

8 Q Do you remember what Hallmark did right after it found out
9 that Clipper had received that single e-mail? Do you remember
10 what action Hallmark took?

11 A I don't.

12 Q The action Hallmark took was to agree to a set of search
13 terms with Clipper and have Clipper start looking, isn't that
14 right?

15 A Uh-huh.

16 Q I'm sorry, sir. Yes? You have to say yes?

17 A Yes.

18 Q So Hallmark didn't sue right away when it found out about
19 the e-mail, did it, sir?

20 A No.

21 Q In fact, Hallmark got Clipper to start the search, isn't
22 that right?

23 A Yes.

24 Q And Clipper was in the process of searching after Hallmark
25 knew that Clipper had received this information, right?

1 A I don't know the exact sequence.

2 Q It was months though, wasn't it, sir?

3 A Before we sued, we knew that Monitor Clipper had in its
4 possession the information from our BMR despite the fact that
5 they had attested for years that they did not.

6 Q I want to be clear about that. Hallmark, in your words,
7 knew, quote, unquote, that it had been lied to supposedly by
8 Clipper, correct?

9 A Yes.

10 Q And didn't sue, isn't that right?

11 A We sued shortly afterward. I can't remember how long it
12 was.

13 Q Well, Hallmark realized it had been lied to and then
14 turned around and agreed on search terms, isn't that right?

15 A I don't know the exact sequence.

16 Q But the search terms were after this, right?

17 A I don't know the sequence but I know we were engaging --

18 Q I'm sorry. Then what happened was in the fall, out of the
19 blue, without any warning, Hallmark just went ahead and sued
20 Clipper, correct?

21 A Well, I don't think -- we did sue. I don't think it was
22 out of the blue. It was founded on the fact that we found that
23 Monitor Clipper did have documents in its possession.

24 Q But Hallmark knew that already. Hallmark knew that months
25 earlier, right?

1 A Again, I don't know the exact sequence of when we found
2 the documents but we did have a very strong basis and what was
3 reviewed with me was that we had information that led us to the
4 conclusion that Monitor Clipper had in its possession
5 information from our BMR that it should not have had.

6 Q And Hallmark knew that if the review, Clipper's review and
7 Clipper turned over what it had to Hallmark, then Hallmark
8 would have to give Clipper the general release that had been
9 signed, isn't that right?

10 A No. We had the right to sue for misconduct. And there's
11 no question that we had been lied to in terms of the
12 conclusions that Monitor Clipper had given us, that they didn't
13 have that material in its possession. When we found they did
14 we had the right to sue for improper misconduct.

15 Q Hallmark had the right to sue but didn't, correct?

16 A We did. We did sue Monitor Clipper.

17 Q From the moment that Hallmark realized it was lied to, to
18 the moment that the lawsuit arrived, are you aware of a single
19 e-mail from Hallmark to Clipper, a single communication from
20 Hallmark to Clipper where Hallmark says, Clipper, you're taking
21 too much time on this search, you lied to us, this deal is
22 broken, we're suing?

23 A Well, the concern, again, was not the amount of time on
24 the search, the concern was the fact that our information was
25 in the hands of Monitor Clipper.

1 Q So the concern wasn't how long the search was taking?

2 A Well, I was mostly concerned about the information because
3 these represent our trade secrets.

4 Q So I'm going to ask you --

5 A -- details in the BMR and those documents could be very
6 devastating to our business if they were inappropriately shared
7 with competitors or customers.

8 Q I'll ask you again, sir. Between the time that Clipper,
9 I'm sorry, between the time that Hallmark decided it had been
10 lied to and the time the lawsuit was filed, those months, while
11 Clipper was performing the searches called for under the
12 agreement, are you aware, sir, of an e-mail or a phone call
13 that went from Hallmark to Clipper where Hallmark said, deal is
14 off. You lied to us. We're suing.

15 A I don't know the details, the sequence of the timing or
16 the back and forth. Those are the details I don't know.

17 MR. MANCHEL: No further questions, Your Honor.

18 THE COURT: Let's break for lunch. We'll plan on
19 returning to the courtroom about 1:15. That's a little less
20 than an hour but we got kind of a late start. So I'd like to
21 try to makeup for it if we can.

22 Please remember Instruction No. 7. Don't discuss the
23 case with anyone, keep an open mind until you've heard all the
24 evidence and the views of your fellow jurors. We'll see you
25 back here at 1:15. We're in recess.

1 (Witness temporarily excused.)

2 (Noon Recess)

3 (The following proceedings were had OUT OF THE
4 PRESENCE AND HEARING OF THE JURY:)

5 THE COURT: All right. If the jury is ready, let's
6 bring them in, please.

7 (The following proceedings were had IN THE PRESENCE
8 AND HEARING OF THE JURY:)

9 THE COURT: Welcome back. Please be seated.

10 Mr. Aisenbrey, your redirect examination.

11 MR. AISENBREY: Thank you, Your Honor.

12 REDIRECT EXAMINATION

13 BY MR. AISENBREY:

14 Q Mr. Hall, Mr. Manchel was asking you some questions about
15 Exhibit, I think he used D1268 but we were using D227. Either
16 way it's the letter that Mr. Gardner wrote.

17 Do we have 227? I'm wrong. It's not 227. It's
18 1268.

19 Do you remember this letter that you were shown this
20 morning?

21 A Yes.

22 Q And I think you said that you had not read it before it
23 went out, right?

24 A Right.

25 Q But you were aware of it and you were asked a lot of

1 questions about it. Do you remember that?

2 A Right.

3 Q Do you remember the questions you were asked about it?

4 A Yes.

5 Q Could you blow up that first paragraph?

6 Mr. Manchel only blew up the first sentence. This is
7 written by Brian Gardner, is that right?

8 A Yes.

9 Q He wrote, we were shocked to learn that you're entering
10 into direct competition with Hallmark Cards after you obtained
11 Hallmark's most confidential core business trade secrets
12 through an intimate consulting relationship under which
13 Hallmark paid you millions of dollars.

14 Do you remember he read that you?

15 A Yes.

16 Q He didn't enlarge the rest of that paragraph. It goes on
17 and says, according to media published reports, Monitor Clipper
18 Partners, a subsidiary of Monitor Company Group, plans to
19 invest in Recycled Paper Greetings.

20 Now, at the time this was written did you understand
21 the detail, who owns what between Monitor Clipper and Monitor
22 Group?

23 A No.

24 Q Did you know that Monitor Group that, excuse me, that the
25 seven of the eight managing directors of Monitor Clipper were

1 also partners of Monitor Group?

2 A Yes.

3 Q Now, when you understood that Monitor was free to consult
4 with another greeting card company, did you think they were
5 free to go ahead and buy one with one of their, what you
6 believed to be a subsidiary?

7 A No.

8 Q Could we turn to the next pages, please? To the next to
9 the last paragraph?

10 Mr. Gardner notes that he, he was looking on the
11 Monitor dot com website, reveals that Monitor Clipper has
12 privileged access to proprietary resources of the Monitor Group
13 and the close proximity of the group companies within the
14 Cambridge office allows for ready collaboration?

15 Was that a matter of concern to you?

16 A Yes, absolutely.

17 Q Is this the same thing to you as consulting with another
18 greeting card company when one of them buys it and they are in
19 the same building?

20 A No. Not when they have that same kind of relationship.

21 Q The bottom paragraph on that page he notes that Monitor
22 Clipper leverages its close relationship to Monitor with
23 respect to and he's quoting from the website, day-to-day
24 operating issues as well as long term company strategic
25 positioning. Monitor Clipper's tight strategic relationship

1 with Monitor's industry experts allows it to quickly understand
2 and analyze a variety of industries that Monitor Clipper
3 actually identifies a substantial number of potential
4 investments through Monitor's business relationships and
5 through initiatives to target industries where Monitor has
6 significant knowledge and expertise?

7 Did that concern you?

8 A Yes. We were very concerned about the loss of our BMR.

9 Q Now, Mr. Manchel asked you about the BMR presentations and
10 he asked you about a question from an interrogatory answer
11 where the question were asked. The answer was Hallmark has no
12 evidence at this time that Clipper received any of Hallmark's
13 terms of sale with Hallmark's customers. Do you remember that?

14 A Yes.

15 Q Terms of sales with the customer are what?

16 A Well, terms of sale would be things like returns,
17 obsolescence, merchandising costs, margin.

18 Q They would be revealed in the contract?

19 A They would be revealed in the contract.

20 Q Are you aware of any information that Monitor Clipper had
21 any actual contracts with Hallmark's customers?

22 A No.

23 Q Go to Exhibit 487, please. And would you turn to the Gold
24 Crown document on, just a second I'll give you the page.

25 That's -- this is the one that was a Gold Crown

1 update. Do you remember that?

2 A Yes.

3 Q Could you turn to Exhibit 487 at 208? Maybe it's 209.

4 It's page 46 of the document, if you can read those
5 numbers.

6 Your Honor, may I approach the document for a moment?

7 THE COURT: Yes.

8 MR. AISENBREY: You've got to go up to about 46.

9 BY MR. AISENBREY:

10 Q Mr. Hall, what is this?

11 A This is a summary of line item comparisons of each of our
12 major channels of trade. And it shows what our gross shipments
13 are to that channel. It identifies precisely what our returns,
14 obsolescence and terms costs are. It describes what the direct
15 margin is and then it describes the casual labor that we would
16 apply to the service of the business. And then the cost that
17 we spent on fixturing, merchandising in the store. So it's a
18 summary of the important terms of our contracts. And this is
19 the kind of thing that we absolutely would not want a
20 competitor or a customer to know about.

21 Q The four lines there, Gold Crown, Hallmark Mass, EFH
22 Ambassador Mass and Wal-Mart. Are those different channels?

23 A Yes, those are different channels.

24 Q Does this reveal the specifics of a contract with any one
25 of those?

1 A No. These summarize the terms but it does not reveal the
2 specific contract.

3 Q Now, Mr. Manchel asked you some questions, he showed you
4 some pages in these documents and asked you if they were public
5 information. Do you remember that?

6 A Yes.

7 Q Could you go to the second OEC presentation, page 8 of
8 that, December 12.

9 You talked about this a little bit. This is an
10 example of one of the pages in there. This is census data,
11 isn't it?

12 A Yes. The bottom left-hand, it's noted that that
13 summarizes U.S. Census information.

14 Q Does Hallmark contend that U.S. Census information is
15 confidential?

16 A No. It's public information.

17 Q But is that information there put together with other
18 information in the compilation to drive the conclusions?

19 A We use that public information paired with our unique
20 information to build conclusions about the trends and
21 opportunities in the industry.

22 Q Could we have Exhibit D589?

23 Mr. Manchel spent some time with you on this document
24 here. Do you remember this?

25 A Yes.

1 Q Now, this was a presentation. He showed another document.

2 Just briefly, if we could have D270.

3 This is the agenda, this was the agenda for a
4 Greeting Card Association meeting. Do you remember that?

5 A Yes.

6 Q And I think it's very hard to read.

7 If I could approach, Your Honor?

8 THE COURT: You may.

9 BY MR. AISENBREY:

10 Q It's very hard to read but it says that this is
11 October 2002. You want to read it on the regular page? You
12 can't read it on the screen. The date of that October 2002?

13 A Yes.

14 Q Thank you. So Mr. Welch did this presentation in October
15 of 2002?

16 A Yes.

17 Q Could you tell me when Mother's Day is in 2002?

18 A First Sunday in May.

19 Q Every year?

20 A Every year.

21 Q In your line you probably know that.

22 In fact, if we could go back to D589.

23 Mr. Welch was presenting information about Hallmark's
24 Remembering Campaign, wasn't he?

25 A Yes.

1 Q As he points out --

2 If you go to the next to the last page, the third to
3 the last page I guess.

4 This campaign was launched Mother's Day of 2002,
5 right?

6 A Yes.

7 Q So when do you start doing advertising for Mother's Day?

8 A It would be several months before.

9 Q So in March?

10 A It would be early, well, probably before March, probably
11 January or February.

12 Q So in October Mr. Welch told people about an ad campaign
13 that Hallmark had been running for almost ten months?

14 A Yes.

15 Q And in that --

16 If we could go to the second page, Cindy.

17 These are ads that had been on the air for almost ten
18 months. And he points out, we're trying to get people over 45,
19 women over 45 to buy more cards?

20 A Yes.

21 Q Now, if that was told at the Greeting Card Association to
22 an American Greetings person, as Mr. Manchel pointed out they
23 were present, exactly how would they use that piece of
24 information against Hallmark?

25 A Well, they would have already seen the ads from on

1 television and we didn't show them the specifics underneath it.
2 We just talked about the campaign available to everybody.

3 Q The next page.

4 First bullet. Consumers have many choices. Cell
5 phones, computers. Was that a startling revelation to anybody
6 in October of 2002?

7 A No.

8 Q Mr. Welch wasn't telling anybody any big secret, was he?

9 A No.

10 Q Greeting cards are not the easiest to use. The
11 illustration there appears to be you have to mail it?

12 A Yes.

13 Q Pretty much have to mail a greeting card, don't you?
14 Unless it's an e-greeting?

15 A Yes.

16 Q Or the need to convince them why greeting cards are worth
17 the effort. Now, is that something that's important?

18 A No. It's important but not new.

19 Q Not a big surprise.

20 A Yes.

21 Q How about they have other choices and they may just
22 forget?

23 A No.

24 Q I think you said that your purpose in this was to get the
25 other manufacturers to join Hallmark in trying to get people to

1 buy more cards?

2 A Yes.

3 Q Is there anything in this thing that's a threat to
4 Hallmark?

5 A No. We purposely chose the information from our strategy
6 that we thought could encourage others in the industry to
7 encourage people to use greeting cards more often. We were
8 careful not to reveal any information underneath this but we
9 did want others in the industry to promote the use of greeting
10 cards and we wanted to encourage that behavior because it's
11 good for the entire industry to be able to do that.

12 Q You got some questions about the Noon News. Do you
13 remember that?

14 A Yes.

15 Q And could I have Exhibit D267, please?

16 This is one in which --

17 Column on the right, Cindy, just the middle of the
18 column on the right. No. Actually it's Q and A below that.
19 Thank you.

20 This is talking about the Remembering Campaign also,
21 isn't it?

22 A Yes.

23 Q It's dated, I don't know if you can see it now but I'll
24 tell you the date is July 12, 2002. So the Remembering ads
25 have been on the air for 5 months or so, is that right?

1 A Yes.

2 Q And, again, you're telling Hallmarkers information about
3 what we're doing. Why would you tell Hallmarkers about it?

4 A We wanted them to be excited about the business and focus
5 on the things that we needed to do to be more successful. And
6 it was important for them to know that we had a strategy, they
7 knew where we were going and kind of what was expected. But we
8 shared a very high level. But it was really with the intent of
9 engaging more people, letting everybody that worked for the
10 company understand what we were focusing on.

11 Q Now, if you could go back to Mr. Hall's deposition.

12 You were asked some questions about whether you
13 regarded the Noon News as confidential? Do you remember that?

14 A Yes.

15 Q He showed you a page from, part of a page, 208, lines 8 to
16 11 is what he called it. And do you consider this information
17 confidential Hallmark information that is contained in the CEO
18 prospectus and they showed, yes. It, the -- the -- the intent.
19 But the rest of the answer goes on.

20 I'd like you to enlarge the rest of the page. Just
21 take it from line 8 to the end of the page.

22 You went on to say, the intent isn't to go public. I
23 don't write these columns to go into *The Kansas City Star*.
24 I've written them for Hallmarkers, for their use and about our
25 business.

1 Do you consider it confidential Hallmark information?

2 I'm careful not to disclose information that, you can
3 see that it's a very high level.

4 Well, what I'm trying to get at is, get an
5 understanding of, you don't seem to want to answer whether it
6 is, do you or don't you construe it to be Hallmark confidential
7 information?

8 Go over to the next page.

9 We construe this to be non public information shared
10 with employees but we're also careful not to provide any
11 details of our, you know, any of the details that might be
12 detrimental if they fall into the wrong hands.

13 Those were your answers, weren't they?

14 A Yes.

15 Q Earlier in the deposition, a few pages earlier --

16 If you could go to page 190, Cindy.

17 You were asked the question at line 25 starts and
18 then you have to go to the next page. But nothing in the Noon
19 News is considered confidential by Hallmark, is that right?

20 We would think, we would think of it as being
21 appropriate information for a very broad audience of Hallmark
22 employees.

23 Okay.

24 Not intended to be made public or put on the Internet
25 but it would be, it would be built with a careful lens to the

1 fact that it's a very broad group of Hallmark employees and we
2 still try to provide, but they need to know, what's the
3 appropriate level of detail they would need to know to be able
4 to do their jobs.

5 But there's no restriction on someone taking the Noon
6 News out of Hallmark, correct?

7 No. They can take it home.

8 They could take it home?

9 Yes.

10 They could show it to their family members? They
11 could show it to their friends, correct?

12 We try to encourage it for communication purposes but
13 yes, I'm sure there are Hallmarkers that share it with their
14 family.

15 There, there's no restriction on someone's use or
16 disclosure of the Hallmark news?

17 Well, we certainly wouldn't want to encourage people
18 to share that with our competitors or more broadly but it's
19 information that we think is interesting, it is information to
20 them and their work here. It's important for them to
21 understand what we're doing. But we realize it's a very broad
22 distribution and a very large audience.

23 So the Noon News is, basically, the news that goes
24 out to Hallmarkers to do their job, is that right?

25 A That's correct.

1 Q Now, the last thing I want to ask you about. You were
2 asked some questions about Exhibit 215. We don't need to see
3 it. It's the confidential agreement that Mr. Manchel asked you
4 about?

5 A Yes.

6 Q He had a lot of questions about can you point to this
7 e-mail or that letter. Are you familiar with all the
8 communications that went back and forth between Hallmark legal
9 and Clipper's lawyers in the summer of 2008?

10 A No.

11 Q Or even the summer of 2007 for that matter?

12 A No. There was a lot.

13 Q Who would be the right person to ask those questions of?

14 A Brian Gardner, who is our general counsel.

15 Q He will be here later this week. Perhaps Mr. Manchel will
16 have questions for him.

17 Your Honor, that's all I have of this witness.

18 THE COURT: Recross.

19 RECROSS-EXAMINATION

20 BY MR. MANCHEL:

21 Q Sir, you were asked a question from your counsel just now,
22 in essence, the same question I asked you. Do you consider the
23 Noon News confidential? He read a couple of pages worth of
24 testimony to you. I'm going to ask you the question and ask if
25 you can maybe give me a yes or no. Is the Noon News

1 confidential?

2 A I'm sorry. I want to be responsive to the question. It's
3 an audience that we know is very broad. It's a communication
4 vehicle that's accessible by the public. It's an audience that
5 we know needs to understand and have context. But we provide
6 information in there that is of something that we know could
7 fall into the hands of a competitor or could fall into the
8 hands of a customer so we're very careful about what we put in
9 the Noon News. We don't intend for that to be a press release
10 to *The Kansas City Star*. We don't intend to put it out for our
11 competitors. But we do try to provide context for our
12 employees. But it's very carefully considered knowing that
13 it's a very broad distribution and that people are likely to
14 talk about it, share it or maybe for it to fall in others
15 hands. So we're very careful not to put confidential
16 information in the Noon News that would be to our detriment.
17 I'm sorry. I'm trying to answer it the best I can.

18 Q David Hall is the president of Hallmark?

19 A Yes, he is.

20 Q He's your brother?

21 A Yes.

22 Q Would you put up, please, David Hall's testimony, April 6,
23 2011, page 101, lines 6 through 10, please?

24 MR. AISENBREY: Your Honor, is this impeachment?

25 THE COURT: Step up, please.

1 (COUNSEL APPROACHED THE BENCH AND THE FOLLOWING
2 PROCEEDINGS WERE HAD:)

3 MR. MANCHEL: David Hall came out and said this was
4 not confidential. He's an officer of Hallmark. And under Rule
5 30, 32A3 I can use that testimony for any purpose in the case,
6 deposition testimony.

7 MR. AISENBREY: He hasn't really denied it's not
8 confidential but that's, I mean, if we're going to keep going.

9 MR. MANCHEL: I'll show the jury. It's very simple.
10 He just comes out and says it's not even a Hallmark document.

11 (THE PROCEEDINGS RETURNED TO OPEN COURT.)

12 BY MR. MANCHEL:

13 Q Would you show the jury, please, would you highlight for
14 the jury lines 6 through 10?

15 "ANSWER: I don't think that I would see the Noon News
16 as a Hallmark document. It is a publication to try to share
17 some communication with our employees audience.

18 "QUESTION: So you don't view that as a Hallmark
19 document?

20 "ANSWER: As a confidential document, no, that's
21 correct.

22 Is that a correct statement from your brother, sir?

23 A I think that's a good answer. It's not a communication.
24 It's a publication that we try to share communication with our
25 employee audience.

1 Q Then there is the second part of the answer, isn't there
2 sir?

3 A Yes.

4 Q As a confidential document, no, correct? It's not
5 confidential?

6 A Yes.

7 Q Now, would you pull up on the screen, please, Defendant's
8 Exhibit 1268.

9 You were shown this letter, again, weren't you, sir?

10 A Yes.

11 Q I tried to write it down as best I could. But your answer
12 was it was okay for Monitor to work as a consultant with a
13 competitor like RPG but it wasn't okay for Monitor to own RPG,
14 right? Is that the gist of the testimony that you gave?

15 A Well, if I can, I'd like to clarify the kind of concern.

16 Q I'm sorry. I'm just trying to establish here the
17 testimony that you gave to your lawyer was, I wrote down, it
18 was okay for them to be a consultant but they weren't free to
19 buy one. That's what you said, right?

20 A Yes.

21 Q Well, first of all, they were absolutely free to buy
22 anything they wanted, isn't that right? After two years?

23 A We were, you're asking a legal point. I don't know. The
24 arrangement that we had was to allow them to consult but it was
25 not to allow them to have our confidential information. When

1 we read the press release and when we saw the website, it was
2 indistinguishable to us that the group that we were working
3 with was different than the new competitor that we were going
4 to be competing with. And we were very concerned about
5 documents from the BMR being shared with a direct competitor.

6 Q So let me see if I can break this down for you, sir.
7 First question. Was there anything in the Hallmark Monitor
8 agreement that says after two years Monitor Group can't go out
9 and buy a competitor?

10 A No.

11 Q In fact, you know, sir, Monitor Group didn't buy RPG,
12 isn't that right? You know that, don't you?

13 A I do now.

14 Q And you know that Clipper didn't buy RPG, isn't that
15 right?

16 A That Clipper?

17 Q Correct.

18 A Didn't buy RPG?

19 Q Correct.

20 A I don't know that.

21 Q Do you even know who the owner of RPG is, sir? Hallmark
22 brought this lawsuit. Do you know who owns RPG or who owned
23 it?

24 A The press release said that Monitor Group, Monitor Clipper
25 Group acquired RPG. That was the information that we had that

1 gave us the concerns that all of our confidential information
2 might become jeopardized.

3 Q Did any of your in-house lawyers or anyone just go to the
4 Secretary of State's office and see who the owner of RPG was?

5 A I don't know what they did after reading the press release
6 but we were very concerned about protecting our information.

7 Q I understand your concern. You say you acted on a press
8 release. Did anybody just go look up in the public records who
9 owned RPG, in fact?

10 A I don't know what the lawyers did to research it. I do
11 know that the website was very disturbing as I pointed out
12 earlier because it was very clear in terms of implying that
13 information was shared and that was one of the advantages for
14 Monitor Clipper is that they had access to information. When
15 we saw that we were concerned about having access to our
16 information.

17 Q Your attorney took you to a Gold Crown presentation, first
18 you were taken back to the interrogatories where Hallmark said
19 we don't have any claim for retail terms then you went to look
20 at one of the presentations, correct?

21 A Yes.

22 Q What was the date of the presentation your attorney showed
23 you?

24 A For the Gold Crown?

25 Q Yes.

1 A I think it was January but I don't recall.

2 Q That's right. January 2002.

3 A Yes.

4 Q What was the date of the interrogatories I took you
5 through? Do you remember?

6 A I don't.

7 Q March of 2012. So someone at Hallmark decided that what
8 was there in 2002 was not worth reporting in the
9 interrogatories in 2012, right? Twelve years, ten years later?

10 A You're asking me about a level of detail in terms of a
11 legal document, the interrogatory, which I was not involved in
12 constructing. I have great confidence in our legal staff and
13 the basis on which they put that information together. They
14 were acting to protect our confidential information which we
15 began to be very concerned about as soon as we heard that
16 Monitor Clipper might have access to it.

17 Q Your attorney also took you through a couple of questions
18 where he got you to say that the Remembering Campaign had been
19 out, we think, for about ten months before the GCA
20 presentation, correct?

21 A Yes.

22 Q If you look at a Remembering Campaign commercial, does it
23 say anywhere in there that the point of the commercial is to
24 target women over 45 to buy cards?

25 A It doesn't say that, no. I think for a marketer, they

1 could look at the creative execution and determine that.

2 Q Well, it can certainly look at it and say you're going for
3 emotion. That's right, isn't it?

4 A Yeah. We could go for emotion.

5 Q But there's nowhere in there that says, hello, women over
6 the age of 45. We're targeting you to buy cards. Right?
7 That was a BMR conclusion, wasn't it?

8 A Yes.

9 MR. MANCHEL: No further questions.

10 THE COURT: Thank you, Mr. Hall. You may step down.
11 (Witness excused.)

12 THE COURT: Plaintiff may call its next witness.

13 MR. GERMAN: Your Honor, Charlie German for Hallmark
14 at this time. And our next witness is Wayne Strickland who I
15 believe is in the hall.

16 WAYNE STRICKLAND, PLAINTIFF'S WITNESS, SWORN

17 DIRECT EXAMINATION

18 BY MR. GERMAN:

19 Q Good afternoon, Mr. Strickland. Welcome to federal court.
20 Would you, please, introduce yourself to the Court and jury?

21 A My name is Wayne Strickland.

22 Q And you're employed at Hallmark?

23 A My 33rd year at Hallmark Cards.

24 Q Tell the Court and jury, please, what your job entails
25 today that you're doing today?

1 A Today I'm general manager of the Wal-Mart Customer Team.
2 I have about, little less than a hundred full-time employees
3 who live in Kansas City or northwest Arkansas or around the
4 country. About 5,000 part-time employees that help us run the
5 Wal-Mart business.

6 Q What does it mean, Mr. Strickland, to run the Wal-Mart
7 business for Hallmark? What is it you do?

8 A Wal-Mart is our single largest customer. We do about
9 \$900 million with Wal-Mart in retail. I'm responsible for the
10 strategy development for how we market with Wal-Mart. I'm
11 responsible for making sure Hallmark Cards understands what
12 Wal-Mart expects of Hallmark. We have product development
13 responsibility, execution responsibilities. It's a different
14 kind of category, management functions, both here and in
15 Bentonville. So it's my responsibility to make sure that we
16 allow resources to meet the needs of Wal-Mart and Hallmark so
17 they're making the profits that they want to make and Hallmark
18 is making the profits that we want to make.

19 Q Why do you have 5,000 employees around the country for
20 this one customer?

21 A The agreement we have with Wal-Mart in our pricing
22 strategy, our terms strategy is that we've agreed to service
23 the store. So, for example, Halloween was over last week so
24 Halloween cards that didn't sell had to come off the rack. So
25 somebody has to do that work. Our people do that work.

1 Thanksgivings cards have to go back on the fixtures. We also
2 set some Christmas merchandise. I'm sure there is lots of
3 Christmas merchandise in the stores here in Kansas City. So
4 we, basically, act as the back end operation for Wal-Mart.
5 When the product comes in the back room, we take it. We store
6 it. We put it on display. We take it down when it doesn't
7 sell. So we've got people in our Wal-Mart stores on a daily
8 basis all across the country.

9 Q Thank you. Are you as the general manager of the Wal-Mart
10 business, let's back up a second. Take us, so you've been 33
11 years, explain to the jury your tenure at Hallmark, what
12 various jobs you've held leading to the one you have now?

13 A Thirty-three years. Started out at Fort Smith, Arkansas,
14 as a sales representative. 1980. Basically, little piece of
15 geography from North Arkansas down to Hooks, Texas. I was
16 responsible for calling on the Hallmark stores in that part of
17 the country that we did business with. Did that for 3 years, 3
18 years, 4 months.

19 Moved down to Dallas, Texas. Actually, Arlington,
20 Texas. Had a little bit bigger sales responsibility. Had part
21 of Fort Worth and Dallas, out to west Texas a little bit.

22 Then I was promoted to what we call market
23 development manager where I was responsible for finding people
24 who wanted to own Hallmark stores and putting them in stores,
25 helping to negotiate the leases with people who had stores,

1 wanted to sell stores. Find people that wanted to buy the
2 stores. So a couple years of that. Remodeling the store.
3 Maybe somebody had a store and they wanted to move to a bigger
4 location. So did that for a couple of years.

5 Then I came to Kansas City. I was a market
6 development, product marketing manager for greeting cards which
7 meant I was representing kind of the field that the retailers
8 wanted to do for the every day greeting cards for the Hallmark
9 brand. Then did that for a couple years.

10 I went out as a regional manager in Atlanta, Georgia.
11 Back then we called it our special markets business. It was
12 department stores, bookstores, military bases. Had everything
13 from Washington DC to Miami to New Orleans. I had people that
14 worked for me scattered across those 12 or 13 states. Then I
15 came in -- did that for a couple years.

16 Came in. I was the sales vice president for that
17 group. So I had all that group report up to me.

18 Then after that I became channel programs director
19 for the Hallmark brand. Which meant I was trying to represent
20 all the needs of all the different customers for the Hallmark
21 brand back to a product areas. Did that for a couple years.

22 Then I became marketing director for the Gold Crown
23 Stores. So I was responsible for marketing for Gold Crown
24 which was back to marketing and merchandising. And I think IT
25 might have even been under my leadership for part of that. So

1 did that for about three and a half years.

2 Then I became, we called it Expressions from Hallmark
3 slash Ambassador sales team which is basically supermarkets. I
4 think we had Target, K-Mart, but mainly supermarkets and a
5 couple of discount stores.

6 Q You were the head of that?

7 A I was the team leader for that.

8 Q About what year was that?

9 A It was January of 2000 I started.

10 Q Just trying to get a sense of where we are in this,
11 career-wise.

12 A It's confusing. So January of 2000, I did that for about
13 4 years.

14 Then I became director, Vice President of Customer
15 Strategy and Planning. I did that for two or three years.

16 And became the Vice President of Category Management.

17 Then I was team leader of the Walgreens team.

18 Then I was team leader of the Drug Store team.

19 Then team leader of Wal-Mart team.

20 Q Where you are now. You've been around all sides of the
21 Hallmark operation?

22 A Marketing and product development and sales and team
23 leader and carried a bag, did all of that.

24 Q You have testified in this case as an official company
25 representative to express the company's position on certain

1 aspects of the damages claim?

2 A Yes.

3 Q And you testified in the earlier arbitration proceedings
4 against the consulting firm, Monitor?

5 A Yes.

6 Q Now, let's focus for a moment on your current position as
7 the team leader of the Wal-Mart business. Let me ask you, is
8 the financial relationship between Hallmark and its customer,
9 biggest customer, Wal-Mart, confidential information?

10 A Absolutely.

11 Q Why is that kept confidential?

12 A We do not want our customers, other customers, especially
13 our competitors, to know our terms of sale or pricing or
14 strategy for this customer or any customers. It's very
15 important that it's confidential.

16 Q Are the costs that Hallmark takes on to service that
17 Wal-Mart business, your 5,000 employees, the work that is done
18 in all of those stores, that cost structure for Hallmark, is
19 that considered confidential information?

20 A Yes, it is.

21 Q Are the profit margins that Hallmark earns when it sells
22 products to Wal-Mart considered confidential information?

23 A Extremely.

24 Q Why is all of that so secret?

25 A We don't need all of our customers or competitors to know

1 our pricing for different customers and profits or margins we
2 make for different customers. It's different for each
3 customer. You wouldn't want your competitor or your existing
4 customers to know what you're selling to this customer or that
5 customer down the street. That information is confidential.

6 Q And that's considered confidential within Hallmark?

7 A Very confidential.

8 Q How many people within Hallmark know the financial
9 relationship between Hallmark and Wal-Mart?

10 A Hard to say. Ten or 12, 15.

11 Q Out of how many thousands of people?

12 A Thousands.

13 Q So it's fairly close to the vest?

14 A Very close to the vest.

15 Q Could we have Exhibit 487 back up, please? I'd like to go
16 to that.

17 You know what Exhibit 487 is, Mr. Strickland? It's
18 been admitted in evidence. We have talked about it throughout
19 this case. Do you recognize the e-mail and the attachments to
20 it?

21 A I did.

22 Q And you understand from your role as the official company
23 representative testifying in this case on certain aspects of
24 the damages claim, you have an understanding why Hallmark has
25 sued Monitor Clipper and Adam Doctoroff?

1 A I do.

2 Q What is your understanding of the reason for this case?

3 A The reason for the lawsuit is we've had a lot of material,
4 particularly file presentations that were stolen from us, that
5 held confidential information about our strategy for our
6 purposes. In 2001 we consulted with Monitor Company to begin
7 what we call the Business Model Redesign Process. The business
8 model work was the most extensive, comprehensive analysis and
9 evaluation of our greetings business -- I guess back there I
10 had been around 21, 22 years -- we had ever done. And it's the
11 most extensive work we've done since. If you remember back --

12 Q Excuse me just a minute. And I am going to come to the
13 BMR. But the purpose for the lawsuit is because the five
14 presentations that you mentioned came out of that BMR project,
15 true?

16 A Yes. Yes.

17 Q And in Exhibit 487 here, the e-mail, do you see the, I
18 have a hard copy here if you prefer to look at that?

19 A No, I've got it.

20 Q Do you recognize the names at the top of the e-mail string
21 of Adam Doctoroff?

22 A I do.

23 Q He is this fellow over here, defendant, one of the
24 defendants in this case?

25 A Yes.

1 Q And the attachments to Exhibit 487, the presentations that
2 we talked about, those are part of the BMR project that you
3 described?

4 A Yes.

5 Q Let's go to the Gold Crown page. Do you recognize,
6 Mr. Strickland, that this is one of the five presentations?

7 A I do.

8 Q And it's attached to the e-mail that was sent to
9 Mr. Doctoroff?

10 A Yes.

11 Q You mentioned part of your career tenure at Hallmark
12 involved the management capacity for the Gold Crown Stores.
13 Would you explain to the Court and jury, please, the
14 relationship between Hallmark and the Gold Crown Stores that
15 you see in the shopping centers?

16 A The Gold Crown Stores are, at the time this work was done
17 was roughly 4800, 5,000 stores represented by about 18, 1900
18 individual owners that are individual owners that own and
19 operate their stores. We had about three or four hundred
20 company owned stores that we run but for the most part these
21 are independently run stores by people like in this courtroom
22 that want to have a business, want to run their own business.

23 Q And this work that was part of the BMR project that we see
24 reflected in the Gold Crown channel focused on Hallmark's
25 relationship with those stores?

1 A Yes. The Gold Crown channel analysis, we took a very deep
2 dive on the Gold Crown channel because we needed to understand
3 what we thought the future was going to be for that channel as
4 well as what investments Hallmark needed to make to keep that
5 channel growing. For the greetings business model work we
6 wanted to have a clear understanding of was that channel going
7 to grow, was it going to have more stores, less stores, more
8 owners, less owners. And what role did Gold Crown Stores play
9 in the greetings business going forward.

10 Q Why would that kind of information be of any interest to a
11 private equity company considering an investment in the
12 greeting card market?

13 A Well, this analysis had confidential information about our
14 terms, about our go to market strategy. It told us what owners
15 were the most profitable, what locations were the most
16 profitable, what size store was the most profitable. Whether
17 we owned a strip center in a mall, if it was more profitable or
18 not. It broke down our Gold Crown channel every way we could
19 think of to tell us what the future looked like.

20 Q Mr. Strickland, this is part of the Gold Crown channel
21 analysis document that we're looking at in Exhibit 487 the Gold
22 Crown presentation. Mr. Hall touched on this briefly during
23 his testimony a few minutes ago but give us your perspective
24 what we're seeing on this slide.

25 A This is a highly confidential -- this slide contains

1 highly confidential information about our gross shipments and
2 our terms or pricing we pay toward each group or customers or
3 customer. For example, the top one is gross shipments as of
4 2001. The term R-O-T, ROT, stands for returns, obsolescence
5 and terms. Returns would be things like, go back to our
6 Halloween example, Halloween cards that didn't sell last week
7 at Wal-Mart. We pick those up. Those are called returns. So
8 we manage that with Wal-Mart.

9 By the way we don't do that at Gold Crown. We don't
10 return that product to Gold Crown. They keep it.

11 Obsolescence would be product that we've had on the
12 shelf for a period of time that is not selling. It's in our
13 best interest or the retailers best interest to take that
14 product back.

15 Terms would be additional items that we agree to pay
16 to that retailer. It might be, for Wal-Mart, we give them the
17 fixtures. We own all of the inventory. Wal-Mart doesn't own
18 any inventory. We own it all. It's called paper scan or scan
19 base trade. It might include opening orders for some retailers
20 we give them a free opening order. For some retailers we have
21 placement fees. For some retailers we have marketing fees.
22 What you'll see as you go across there you'll see, I'll use
23 Wal-Mart for example, 457 gross shipments. 142 million in ROT.
24 And if you go, so ROT is all the way across. You've got Gold
25 Crown Nine and Hallmark Mass which is back then it was

1 Walgreens, CVS, Kohl's, I think some military accounts. They
2 carried the Hallmark brand but they weren't Gold Crown. EFH
3 and Bass -- it's 538 million with 55 percent ROT and then
4 you've got Wal-Mart with 457 with 142 million in ROT. Then it
5 talks about team direct cost so that's the cost of the team.
6 So actually the people on the team the full-time account and
7 all of that.

8 Casual labor. Casual labor is a term where we go in
9 and reset a store. Wal-Mart calls it resetting the module. We
10 pay for that meeting time to go in and change out the gift wrap
11 or reset greeting cards. We have fixture amortization.
12 Mr. German you can see from this chart those terms, the cost to
13 serve is different by customer.

14 Q By channel, right?

15 A By channel. Thank you, yes.

16 Q And this information you pointed out was compiled as of, I
17 think it says 2001 second forecast. I think that's later in
18 the year 2001. Does that kind of information change, 2002, 3,
19 4, 5?

20 A The numbers change a little bit but the relationship stays
21 the same. Gross shipment is going to change. Your ROT will
22 change based on your gross shipments but the relationship
23 doesn't change that much.

24 Q So if we're looking at the Wal-Mart column there at the
25 far right, the gross shipments of \$457 million. And returns,

1 obsolesces, terms being 142 million of that, those numbers
2 could change slightly over the period of years but the
3 31 percent would remain about the same?

4 A About the same.

5 Q In 2005 when the events that bring us to this lawsuit took
6 place, was that information current and relevant that you see
7 on the screen?

8 A Absolutely. As it is today. It was then, it was in 2005
9 and it's relevant today.

10 Q How would that information that we see, financial
11 information on Hallmark's four main distribution channels,
12 benefit a private equity company that is thinking about
13 investing fund money in a greeting card company?

14 A If you were wanting to invest in a greeting card company
15 this information would be critical. Because it tells you which
16 channels and customers have the most volume and which ones are
17 the most profitable.

18 When we did this work, there were many headlines,
19 many things that came out of the business model work. One of
20 those was around how profitable we are with some of our largest
21 mass channel customers like Wal-Mart and Walgreens and CVS. I
22 believe most suppliers that do business with Wal-Mart, let me
23 back up. I don't think Wal-Mart is the most profitable
24 customer for most suppliers. They might be the largest but
25 they might not be one of the most profitable because Wal-Mart

1 is pretty good at getting a pretty good price.

2 This information is also critical because most large
3 suppliers, I'm talking about Proctor and Gamble or Unilever,
4 Coke, people who do business in mass channels, Wal-Mart would
5 be their highest volume most likely. Then comes Target and
6 then you would have K-Mart. Then you start with the big
7 supermarkets like Kroger or Safeway and Publix. It's pretty
8 predictable where the volume would come from if you were a
9 company like Proctor, Unilever or Coke or something like that.

10 What is very unique for Hallmark is that Walgreens
11 and CVS are two of the largest called Hallmark mass customers.
12 They are number 2 and number 3 for Hallmark in terms of volume
13 because those two customers have committed quite a bit of space
14 in their store to be a destination for greeting cards. And
15 they are very high volume for us and very high margin.

16 Q By margin you mean?

17 A Profit.

18 Q Profits?

19 A Excuse me. I say margin I mean profit most of the time.

20 Q Is that information, information that a private equity
21 company gleans from this single slide you see here?

22 A Absolutely. You can look right there and tell, the lower
23 your ROT number is the more profitable you're going to be for
24 that customer unless there is something different in your gross
25 shipments number or something like that and this is not. This

1 is by greeting cards.

2 Q And you're familiar, I take it, because of your position
3 in the market end of the business with the company known as
4 Recycled Paper in 2005?

5 A I'm sorry. Asked me again.

6 Q I take it you were familiar with the Recycled Paper
7 company in 2005?

8 A Yes.

9 Q Did Recycled Paper products, greeting products sell its
10 cards in the Gold Crown channel?

11 A Yes, they did.

12 Q Now, we started talking a moment ago that this is a piece
13 of the work that came out of the BMR. Why don't you explain
14 for the Court and jury, please, your role, Wayne Strickland's
15 role in the business model?

16 A I was asked in 2001, I was leading the EFH Ambassador team
17 at the time, if I would work on the Business Model Redesign to
18 primarily represent the customer team. I sat in on some of the
19 consumer team work but mainly my work was to develop the
20 strategies for the customers. So I was working full-time as a
21 customer team leader and also working almost full-time as the
22 representative on the business model work for the greetings
23 business focused on the customers.

24 Q Now, Mr. Hall has described the BMR in some detail for us
25 but why from your perspective on the ground running the EFH

1 Ambassador mass channel, why was the BMR needed?

2 A Back in 2001 we had a lot of questions around the future
3 of the greeting card business. If you can remember in 2001 I
4 bet most people in this room got e-mails with e-greetings on
5 them. You click on it, be a little greeting card come to life.
6 It had silly stuff on it and different things. You might
7 remember if you went to some stores you might see a greeting
8 card kiosk. You go in and call them touch screen greetings,
9 called them a lot of things. But there were a lot of ways to
10 make a greeting. And then there was a rapid expansion of the
11 Dollar Stores, Dollar General, Family Dollar, those kinds of
12 things that we knew in Canada that part of the business was
13 growing really rapidly. We also knew in the UK that part of
14 the business was growing rapidly and was a very competitive
15 market in the UK.

16 Many times what happens in the UK will come to the
17 U.S. eventually. What happens in Canada, some of that will
18 flow down to us eventually. So we had some really tough
19 questions around what is the role of greeting cards in the
20 future? Is it going to be a viable relevant category or will
21 e-greetings be the way people want to communicate. If it's
22 going to be a viable relative category, who is the consumer
23 target? Who do we need to target all of our efforts against,
24 whether it's marketing the product, writing the product,
25 designing the product.

1 And then once you get to that you say what customers
2 do you want to sit on? Might be some that say you want to go
3 to Dollar Store? Let's take our product to Dollar Stores.
4 There might be others that say be all about e-greetings or
5 greeting card kiosk or greeting card vending machines. All
6 kinds of crazy ideas about how to put cards in the hands of the
7 consumer. In which case do you continue to invest in Gold
8 Crown.

9 When you're back in the Gold Crown do you get more
10 aggressive with Wal-Mart? Are there customers out there that
11 we don't do any business with today that we need to be more
12 aggressive with? So this was a very important part of our
13 history that we had to decide was the greeting card business
14 going to be the business we needed to continue to grow and if
15 so how? With who? And how do you do it? How do you spend and
16 what do you want to spend in the future? It's critical.

17 Q Did the BMR itself involve analysis of more than just the
18 greeting card business at Hallmark?

19 A By that we did an analysis of who buys greeting cards and
20 when they buy them, what triggers a purchase.

21 Q I probably didn't ask the question very well. Did you
22 look at the gift's business, for example?

23 A Yes, we looked at the gifts business. We looked at the
24 party business. We looked at different things, yes.

25 Q But what we're talking about in this case is the greetings

1 part of the BMR, right?

2 A Right.

3 Q There are more modules of the BMR than just greetings?

4 A Yes.

5 Q Okay. Now, who at Monitor were the primary consultants
6 working on the greetings business?

7 A I worked with a lady named Elise Martin. Might have been
8 Elise Bates at the time. Elise Martin. Romney Resney, Stacey
9 Raiche, Mark Pocharski, Bob Lurie from time to time. He wasn't
10 a daily participate. But the other names we worked with them
11 almost every day including weekends.

12 Q Did you ever meet a Juanita Moore?

13 A I did.

14 Q What was her role?

15 A I think she was a finance analyst. I didn't spend a lot
16 of time with Juanita.

17 Q You mentioned the name Mark Pocharski, was he one of the
18 senior consultants?

19 A He was.

20 Q Did you work closely with him?

21 A I worked with him. He worked more closely with the guy,
22 John Beeder.

23 Q Who was the head of greetings at the time, at Hallmark?

24 A John Beeder was running the greetings business at
25 Hallmark.

1 Q Now, Mr. Hall described that there were dozens or scores
2 of Power Point presentations that were generated over the
3 course of the BMR. Is that accurate in your experience?

4 A Yes.

5 Q What is it, you've looked at the five presentations that
6 are at issue in this case, true?

7 A Yes.

8 Q What is it about those five presentations that
9 distinguishes them from all of those others, if any?

10 A The five presentations were the summary of dozens, I might
11 even say hundreds but dozens and dozens of smaller pieces of
12 work that summarized our work. For example, on the customer
13 side, you know, I went out with Elise Martin. We went to
14 customer sites on location and asked them questions for an hour
15 and a half or two hours. That entire process might lead to one
16 page in the slide. And that page might lead to one bullet
17 point in the next slide. So there were hours and hours and
18 days and days of work that led up to the summary presentations
19 that together when you add them altogether they represented
20 what our work was.

21 Q What period of time are we talking about from beginning of
22 the consulting work with Monitor to the completion of the work
23 on the greetings part of the BMR?

24 A We started work in early 2001. We completed the greeting
25 card strategy work in December of 01.

1 Q Now, we looked at and one of the presentations that we're
2 going to examine here today is the December 2001 OEC, right?

3 A Yes.

4 Q You've seen that?

5 A Yes.

6 Q Is that the culmination of the greetings work?

7 A December OEC was the completion of the greeting card
8 strategy work. We were done.

9 Q We saw during Mr. Hall's testimony a Power Point
10 presentation that was dated June 2002?

11 A Yes.

12 Q To roughly the same group of people. What was going on
13 between year end 2001 and June 2002 on the greetings BMR?

14 A We were in implementation mode. I personally took
15 additional assignment when that work was done and we were now
16 into staffing and understanding how we best go to market and
17 implement the greeting card strategy. There was other work
18 being done but it was -- the greetings business was all about
19 implementation of the strategy.

20 Q Now, the five presentations then that embodied the
21 business strategy were in your hands. I think the latest one
22 we saw was January of 2002 on the Gold Crown?

23 A Yes.

24 Q Were those presentations kept confidential within
25 Hallmark?

1 A Absolutely.

2 Q We've seen through Mr. Hall's testimony and then some of
3 the examples he gave that a piece of information or a piece of
4 research or a top level conclusion from the BMR might be shared
5 from time to time. But my question is, those five
6 presentations themselves, are you aware of any instance in
7 which any one of them was disclosed publicly?

8 A No.

9 Q Was the information that we see in the five and that the
10 jury will see in the five presentations still confidential in
11 2005?

12 A Yes.

13 Q Was that information confidential at the time it was
14 attached to that e-mail and sent to Mr. Doctoroff at Monitor
15 Clipper?

16 A Absolutely.

17 Q Was it still relevant at that time?

18 A Yes.

19 Q Why doesn't information on Hallmark's business strategy
20 become less and less relevant as time goes on as you begin to
21 implement it and you have ad campaigns and marketing
22 promotions? Why doesn't the information lose its value as time
23 marches on?

24 A The greeting card business, if you look at a lot of trend
25 lines of business, it's not that volatile. It's a pretty

1 steady trend in terms of units in the industry. We're in a
2 little bit of decline right now but it's not volatile. And our
3 terms with customers, our pricing with customers is pretty
4 steady. We, for the mass channel business, Walgreens, CVS,
5 Kroger, Safeway, all of those, they're under contract. We
6 negotiate some times 5 years, some times a little longer, some
7 times a little shorter, contracts with these customers so we
8 could have had contracts, did have contracts in 2001, 2002 that
9 would have been extended beyond 2005. And the relative scale
10 of the terms, percentages, then in 2005 as I testified a few
11 minutes ago is basically the same as it is today.

12 Q Thank you. Let's put Exhibit 487 back up on the screen.
13 Let's just go to the first page. Put the e-mail up.

14 Mr. Strickland, one of your jobs in this case has
15 been to, as a company representative in the case, has been to
16 look at these five presentations and to testify, translate what
17 we're seeing there, true?

18 A Yes.

19 Q So I'd like, I don't want to go page by page because
20 there's hundreds of pages but I'd like to give the Court and
21 jury some sense of what we're seeing through those five
22 presentations. So let's go to the first one. August OEC.
23 Next page. Okay. Describe for us, please, then what the
24 August OEC presentation involved?

25 A August OEC 2001 was a summary of the work for the

1 greetings business model year to date.

2 Q Okay. And the OEC was what?

3 A I think it stood for Organizational Effectiveness
4 Committee. It contained the president of our North American
5 business, Don Fletcher, a handful, say 10 or 12 of the officers
6 and 15 or 20 senior leaders that their role was to listen to
7 this information, ask questions, make sure we're on course,
8 make sure that we weren't missing anything, to basically vet
9 the information as we went forward. So it was some of our
10 senior experienced people in the business that were there.

11 The reason it's such a large group, Mr. German, is,
12 as I said, this was the most extensive work we've ever done in
13 the business. We had some real tough questions to ask and
14 answer. So this group we met with and we said, here's what
15 we're finding, here's what we're learning. What questions
16 should we be asking? How do you feel about this information?
17 Do you support us going forward?

18 Q Who was the most senior head of marketing for greeting
19 cards at that time on the OEC?

20 A It was a lady by the name of Jan Murley.

21 Q And you mentioned the name John Beeder earlier. He was
22 head of greetings?

23 A He was head of the greeting card business.

24 Q The president of the organization, Mr. Fletcher at that
25 time?

1 A Don Fletcher.

2 Q And then you had a gifts person and a few others?

3 A Gifts person, operations person, technology person, cross
4 functional representation of the company. HR people.

5 Q Okay. Now, we're going to look at a few of the slides
6 here in detail but this is August of 2001. And you told us the
7 work was completed in December of 2001?

8 A Yes.

9 Q Why, having studied this for this case and representing
10 the company on these issues, why is the information that we see
11 in the August presentation of any interest in 2005 to a private
12 equity company thinking about investing in the greeting card
13 company?

14 A Because the information is still relevant. Our pricing,
15 terms, our strategy for how we're going to activate the
16 shopper. Who our consumer target is. Why she buys. In the
17 buying process when do you talk to her.

18 Q And how in your view as a marketing person, a business
19 person does knowing what Hallmark is doing in those areas help
20 somebody like a Monitor Clipper who's thinking about buying a
21 competing company or investing in a competing company.

22 MR. DONOVAN: Objection, speculation.

23 THE COURT: I'll allow him to answer if he knows.

24 THE WITNESS: If someone was wanting to buy a
25 greeting card company and they knew what the biggest player in

1 the category was going to do and how to spend their money, it
2 would inform them all the choices they could make. For
3 example, what one of the choices we made as a result of this
4 work is that we are going to have a greeting card category
5 campaign, a Remembering Campaign. Because in our analysis, we
6 had decided greeting cards are still very relevant. It's a
7 very big category. Consumers, our best consumers actually
8 thought they were still buying more cards but they were
9 actually buying a little less. But they wanted to buy more,
10 they just forgot. In their busy hectic lives, working moms,
11 working dads, big families and everything, they just kind of
12 just, a few cards kind of dropped through the cracks during the
13 year and they forgot to send them.

14 So we put together a category campaign. A category
15 campaign is trying to show the benefits of a greeting card
16 category regardless of what brand, regardless of what customer,
17 regardless of what channel. It's typically what a category
18 leader would do or brand leader would do. Some people would --
19 we use the example of Coke a lot. Coke used to advertise Coke.
20 You never saw any Pepsi commercials because what they were
21 actually doing was advertising soft drinks. If people thought
22 of soft drinks, they just remembered to buy the brand they
23 preferred.

24 So we made a huge investment and change of strategy
25 to invest in a category campaign. So if I knew that and I

1 wanted to go buy a greeting card company, I would say that's
2 terrific because Hallmark is going to advertise the category.
3 I don't have to do any of that. I can take all of my money and
4 spend it where I want to spend it. And by having all this
5 information, all the work, all the analysis, all the summary
6 already done, you can make a lot of choices how you want to
7 spend your money because we've done all the work.

8 Q In 2005 was Hallmark's strategy of investing in the
9 category as opposed to the Hallmark brand a secret?

10 A No. We ran category campaign advertising. So you could
11 watch TV and you knew we were going to advertise the category
12 but you didn't know what else we were doing.

13 Q Let's go to page 18 in this deck and just blow that up if
14 you would.

15 This slide, Mr. Strickland, why don't you explain to
16 the jury very generally what we see in the grid but more
17 particularly those numbers along the right-hand side?

18 A This grid represents a buying process. Most products that
19 you buy, we buy, there's some kind of process you're following
20 the triggers of purchase for a greeting card, you know, there's
21 going to be, figure out which one to read. When there is a
22 trigger, we call it up here, inner circle relationship which
23 might be your mom, dad, your wife, an outer circle
24 relationship, that might be a co-worker, that kind of thing.
25 There is an event that happens that triggers a choice. And

1 then you can see here there's a lot of different choices for
2 that relationship. You could send a card and you buy a gift
3 and make a phone call. You could take them to dinner. It goes
4 on and on and on. So there is a set of choices that a person
5 goes through when they're deciding to buy a greeting card. So
6 a lot of people, most marketers understand that there is
7 choices. But the big aha, the big take away for us from this
8 work is we were spending \$153.6 million way down in the buying
9 process when a person has already kind of made the choice.

10 Q Down there third from the bottom?

11 A Third from the bottom you see \$153.6 million, we were
12 spending money, a person has already made the choice. They've
13 already gone through I'm going to do this, boom. So what we
14 said is we need to shift that. We need to spend more money
15 higher up in the buying process to influence her that it needs
16 to be a greeting card. Love for it to be a Hallmark greeting
17 card but certainly needs to be a greeting card. That's a
18 significant change in how we're spending money and a great
19 amount of money.

20 Q Let's go on forward to, two pages forward. Blow this one
21 up.

22 Tell us what we see in this study here,
23 Mr. Strickland. And first tell us, look at the footnote down
24 at the bottom left. What are the sources of information that
25 we see in this analysis?

1 A This was some of our internal research. The footnotes at
2 the bottom just kind of how our research came up with this
3 information.

4 Q What are we seeing here on the two bar graphs?

5 A What we're seeing on the far left there is green bars.
6 Number 1, it talks about total household participation. So
7 over 90 percent of households participate in the greeting card
8 category.

9 Q Was that news to you?

10 A 90 percent was new. I don't know if it was news but it
11 was very validating especially when you consider very few
12 things have more household participation. I'm not even sure
13 tooth paste and toilet paper are much higher than that. It's a
14 little scary but that's true. What that tells you is that most
15 households in the United States participate in this category.
16 So if you're looking --

17 Q By that you mean, participate in the category, you mean
18 buy cards?

19 A They buy cards. Somewhere along the way 90 percent of the
20 households in United States buy greeting cards. Then it goes
21 on to tell you what greeting card occasions or seasons they
22 buy. The greeting card business is really made up of two kinds
23 of business. There is the seasonal business like Valentine's
24 Day, Easter Day, Graduation, Bosses Day, Halloween, Christmas
25 and Thanksgiving. And every day cards, birthday cards,

1 thinking of you cards, sympathy cards, wedding cards,
2 anniversary cards, all that. This tells you the biggest chunk
3 of the business or biggest chunk of participation is in
4 birthday all the way down to Easter would be the lowest.

5 Then on the right-hand side there is a 5-year change
6 of household participation. So it tells you over the last 5
7 years which of those occasions or seasons was declining the
8 most or the least. This was new information.

9 Q This was new information?

10 A Right.

11 Q Let's go to page 22. Called quantification of buying
12 process opportunities?

13 A Okay.

14 Q Picking up where you left off before about household
15 participation, what does this analysis tell us?

16 A This is another one of those aha moments in the business
17 process redesign for greeting cards as relates to what
18 consumers we need to target. And what this is doing is
19 breaking it down to more expected occasions and less expected
20 occasions. Inner circle, outer circle, more expected occasions
21 would be things that tells you here, Christmas, birthday,
22 Valentine's Day, Mother's Day, Father's Day, anniversary,
23 wedding, those kinds of things. Those are what we call
24 expected occasions. You're not going to miss your husband's
25 birthday or your mother's birthday most likely.

1 Less expected occasions were New Year's, Easter,
2 Thanksgiving, Halloween, smaller occasions and less expected.

3 Inner circle would be those relationships in your
4 inner circle and then outer circle would be, might be co-worker
5 or friend of a friend or neighbor or something like that.
6 Inner Circle, outer circle both have the same meaning whether
7 it's less expected or most expected.

8 So this begins to zero in on, for us, where you need
9 to focus your marketing, your product development, your
10 merchandising, your signing. And we decided you had the most
11 sales for most expected occasions with your inner circle
12 relationships. If you drill down here you can look at the
13 numbers and it tells you, if you want to move a little of the,
14 I forgot about it to I remembered that is pretty good for us.
15 Lot more people buy greeting cards.

16 Q Let's go to the next slide, please, Cindy.

17 This one is entitled potential consumer leverage
18 points. What does that mean?

19 A This slide is saying where you should focus. It's saying
20 for the more expected occasions, inner circle and outer circle
21 are the number 1 and 2 leverage points. The third leverage
22 point would be less expected occasions but still inner circle.

23 The reason this is important is there's a lot of
24 choices you can make in the greeting card business. You could
25 say, gosh, we need to get more people to remember Easter.

1 Let's go after Easter. Well, if you do this analysis, it's a
2 less expected occasion and you could spend a lot of money but
3 it's our analysis that you're not going to change a lot of
4 people that's going to go buy more Easter cards for this
5 category, part of the category is in decline. But if you can
6 take the most expected occasions with your inner circle
7 relationships, get them just to buy a few more cards, we can
8 grow.

9 Q And that was news to Hallmark in 2001?

10 A Yes, it was news. And it gave us a path to say if we do
11 those things we can grow this business. Because, again, big
12 category that is relevant. They're forgetting. They're just
13 forgetting to buy the cards. And if we can intervene higher in
14 the buying process, especially those people more expected
15 occasions, inner circle relationships, go buy more cards.

16 Q Let's look at slide 28. Acquisition of new accounts. How
17 does this analysis work relate to that inner circle, outer
18 circle, more and less expected? What does this tell us?

19 A This is an analysis that we did to say where would you go
20 after new accounts? In the top you see it says, cards more
21 core to the business or it says, cards not core to the
22 business. That was our evaluation of those retailers that make
23 greeting cards core part of the business, was that business
24 important to them? Walgreens, CVS, they were non deep
25 discounter, core to the business, high financial stability.

1 And we have people like Rite Aid and Eckerd, they were non
2 discounted cards core to the business but they were a little
3 shaky financially. So this was our way of trying to coordinate
4 and target what retailers you should spend more money on. Is
5 it core to their business? Are they financially stable? And
6 is this a big opportunity?

7 Q So if you put this analysis of the customers together with
8 the analysis of the consumers, people who buy cards, and the
9 financial relationship information we looked at earlier, what
10 does that tell an investor, a private equity firm thinking
11 about buying a greeting card company?

12 A If they were thinking about buying a greeting card company
13 it would tell them it's profitable. It's viable. It's the
14 biggest company in the -- really the only brand in the business
15 is going to invest in a category and here's who they're going
16 to go market. Gives them a lot of choices. How to spend their
17 money and where to go spend it. The work has already been
18 done. They don't have to speculate on where to go or what to
19 do. The work has been done.

20 Q Is that kind of information on the consumers, on the
21 accounts who buy your cards, the financial relationships
22 available publicly anywhere?

23 A Not that I know of.

24 Q Let's look at slide 33. What does this analysis tell us,
25 Mr. Strickland?

1 A Again, this is one of the aha moments for us in the
2 analysis. This tells us that our top 12 greeting card
3 customers represented 85 percent of our revenue. We also
4 learned that they represented over 100 percent of our profit.
5 So --

6 Q How could it be over a hundred percent?

7 A Because we're not making some money on some other
8 customers. The terms we're paying, there are some high terms
9 customers. We're not making profit on those customers. The
10 reason that this was important, I kind of touched on it
11 earlier, if you didn't know the business, if you didn't have
12 all the analysis and the information you can only get if you
13 really learn the business day-to-day, I think people would
14 think, well, Wal-Mart, probably not making a lot of money
15 there. Because Gold Crown is a speciality store chain that
16 most consumer private product goods companies don't deal
17 with -- the Proctors and the Cokes, they don't deal with Gold
18 Crown. They're off the radar. Then Walgreens and CVS, they're
19 probably No. 12, 13 or 14 for most other companies. But this
20 would tell you hallmark makes a lot of money at Wal-Mart. They
21 make a lot of money at Gold Crown. Here's the nooks and
22 crannies and the idiosyncrasies of the Gold Crown channel. And
23 then they go out and get Walgreens and CVS. I'll be darned.

24 Q Cindy, go to page 39, please.

25 In this part of the analysis we see a study called AG

1 Competitor Analysis. AG is American Greetings?

2 A Yes.

3 Q What does this tell Hallmark?

4 A We did some work to try to determine if American Greetings
5 had a huge cost advantage to us in terms of making a greeting
6 card. So in this Business Model Redesign work, as I said
7 earlier, we're trying to look at A to Z, everything about the
8 business. And one of those we looked at American Greetings and
9 said, now, from a seasonal card basis we're about the same and
10 from every day card business, there is a slight difference. So
11 we did a lot of work on trying to figure out how our
12 competitors operate.

13 Q Now, American Greetings is a public company so this kind
14 of information about cost structures and so forth you could get
15 from their government filings and public reports?

16 A Right.

17 Q Does information like that regarding Hallmark's operation
18 and Hallmark's costs appear in any public filing?

19 A No.

20 Q So this kind of analysis that takes American Greetings,
21 putting it together with Hallmark, is a unique piece of
22 information?

23 A Absolutely.

24 Q Confidential within Hallmark?

25 A Extremely.

1 Q Let's go to page 56.

2 Mr. Strickland, the next two or three pages --

3 Cindy, why don't we go forward quickly to pages 56,
4 57.

5 Is the growth, no growth model scenario one and the
6 next page no growth model scenario 2 following the industry
7 decline. The jury will have these to look at at their leisure
8 but tell us what we see in those two scenarios regarding a no
9 growth model. What does that mean?

10 A Could we go back to the first one? Go back to the first
11 slide.

12 Q Okay.

13 A What we were looking at in this slide two scenarios, gross
14 share following industry decline. So we're looking at the
15 financial implications of, okay, you don't do anything and you
16 just follow the industry trend down. Or you try to grow share
17 by what we ended up doing is advertising, going to market a
18 category campaign. So if someone had this information they
19 don't need to do this work because we've already done the work
20 for them.

21 Q Let's go now, to the December OEC presentation. The next
22 presentation attached to the e-mail. You've told us the
23 greeting card work was done in December?

24 A Yes, sir.

25 Q What does this presentation then represent? It's several,

1 a couple hundred pages long, 100 some odd pages long. We're
2 not going to do it page by page but tell us in general what
3 this presentation embodied when it was presented to the OEC at
4 Hallmark?

5 A This is a summary of the greeting card business strategy
6 work. This is all the months work that we did. This is the
7 summary, we're into the greetings business model strategy work.
8 It says what we're going to go do.

9 Q If somebody thinking about getting into the greeting card
10 business or investing in that category, has this document in
11 their hand, do they know Hallmark's playbook?

12 A Absolutely. They know our playbook. They know our secret
13 sauce. It would be like going to the football game and the
14 defense knows the play you're going to call every time you go
15 to the line of scrimmage.

16 Q Just a couple of general questions. If you can generalize
17 for us, with this growth strategy in hand at the end of 2001,
18 what was Hallmark's business strategy going forward? What
19 changed? How did Hallmark alter its behavior as a result of
20 this work in the BMR?

21 A Well, we identified a new consumer target, women 45 plus.
22 We went after that target. We were going to advertise the
23 category. Launch the Remembering Campaign. We grouped our
24 customers into, the top 15 customers into what, we called them
25 suites at the time. And we put more focus on our top customers

1 to grow them more quickly because that's where we made all our
2 profits and that's where north of, I think the slide said
3 85 percent of our revenue. So it gave us real clearly a focus
4 about the consumer target we should go after, how to activate
5 her at a different point in the buying process and which
6 customers to go after and also what not to do. We didn't go
7 after more electronic greetings and kiosk and chasing Dollar
8 Stores and going after other potentially unprofitable business.
9 We said, greeting card category is relevant. We want to grow
10 it. Here's how we're going to grow it. Here's who will buy
11 it. And here's the customer we're going to get most aggressive
12 with because that's where we can make the most money.

13 Q Was that strategy still in place at Hallmark in the fall
14 of 2005?

15 A Yes.

16 Q Was the information in this Power Point presentation, this
17 business strategy presentation from December of 2001 still
18 relevant in the fall of 2005?

19 A Yes.

20 Q Was it confidential?

21 A Yes.

22 Q In the fall of 2005?

23 A Yes.

24 Q Between December 2001 when this work was delivered and
25 approved and adopted by Hallmark and the fall of 2005 when it

1 got attached to that e-mail, had that compilation, that
2 greetings business model OEC discussion December 12, 2001
3 presentation ever been publicly disclosed?

4 A No.

5 Q Let's look at page 3 of the presentation, please. There
6 you go. Blow that up.

7 Early on in this presentation, Mr. Strickland, there
8 is this time line of various jobs that people at Hallmark and
9 people at Monitor are working on to do this analysis. And you
10 can see that the jobs over to the right appear to fall during
11 the calendar year of 2002. Do you see that?

12 A Yes.

13 Q How do you explain that time line that we see in this
14 presentation with your statement earlier that the work was done
15 at year end 2001?

16 A We accelerated the work. And we completed the greeting
17 card strategy work in December of 01.

18 Q Were some of the things that we see over on the far right
19 that were at least initially slotted to occur in 2002, not
20 done?

21 A Most of that work was not done or it was done earlier.

22 Q Down at the very bottom of that time line we see something
23 called white space?

24 A Yes.

25 Q What was that?

1 A White space is a term we used to say what else might be
2 out there. You know white space opportunities might be should
3 we do kind of a dream space, thinking the deck or examples of
4 kind of white space stuff that might happen. I don't think we
5 ever saw text messaging and all that stuff coming alive like it
6 did. We did a lot of that work very early on and the work
7 before we got to customers and channels and all that, we vetted
8 that pretty hard early which led us to we need to stick with
9 our best customers where we make all of our money and where
10 most of the revenue is and we didn't do any more white space
11 work after the December OEC presentation. We were done with
12 it.

13 Q Let's go to page 7, please.

14 Now, Mr. Strickland, down at the very bottom left the
15 source of this is called Hallmark diary study. Do you see
16 that?

17 A I do.

18 Q That is a proprietary Hallmark research?

19 A Yes.

20 Q What do we see on the chart here?

21 A On this chart we're breaking down category trends in units
22 by lifestyle from 1996 to 2000. Lifestyle meaning young
23 couple, young singles, parents with kids at home, and couples
24 and singles 45 plus without kids in home. You can see on the
25 left there is the axis of millions and bottom is the years.

1 And what you can see starting in 1999 is a
2 significant drop off in units for couples and singles 45 plus
3 without kids in the household. That's where a large part of
4 the unit decline was happening. In fact, looks like
5 180 million units.

6 Q Okay. And what does this tell somebody thinking about
7 getting into the card business?

8 A Well, it can tell you a lot of things. It could say I
9 believe I have a lot of cards that could go after young and
10 middle singles. They seem to be growing. I can make a lot of
11 cards all about parents and kids. That part is growing. I
12 could go after young couples, maybe there's nobody else in that
13 market place. Or I could go after couples and singles 45 plus
14 without kids in the household because that's in decline and I
15 understand what it would take to get them to buying cards
16 again. In other words it gives a lot of information that
17 somebody can make a lot of choices. They don't have to do the
18 work. The work has been done.

19 Q Kind of informed decision making on where to invest in
20 your customers, where to invest in marketing, promotion,
21 advertising?

22 A Marketing, product, customers, what kind of product, size
23 of product, price of product, how you go to market. It would
24 help inform those choices.

25 Q Let's go to slide 13.

1 Mr. Strickland, this one is called exploring target
2 decline and tell the Court and jury, please, what this analysis
3 is telling us?

4 A Well, it might be a little boring, I apologize. But
5 greeting cards on the surface may look like a simple business
6 but it's a very complicated business because, again, there is a
7 seasonal business, Valentine's, Mother's Day, Father's Day, all
8 that and then there is the every day business. And each of
9 those seasons and each of the occasions, birthday, anniversary,
10 wedding, thinking of you, baby, wedding, all that, it's all
11 about the relationship one person has with another person. And
12 let's take Mother's Day, for example. Some people have great
13 relationships with their moms. Some people have average
14 relationships with their mom. Some people don't have a good
15 relationship with their mom. The kind of cards you send, the
16 kind of card you like, the price of those cards, it's different
17 based on that person and the person who is going to get the
18 card and what the card says, what it's about. So there is all
19 these different relationships and you play it over, again, all
20 these different seasons, all the different occasions, all these
21 different relationships.

22 What we did, we broke down 110 possible recipient and
23 occasion relationships. All those things I just talked to you
24 about. And of all of those we said there's 15 largely more
25 expected occasions responsible for nearly all of the decline

1 between 97 and 2000 with friend birthday alone accounting for a
2 third of the decline.

3 So, again, billions of units of greeting cards sold
4 in a year. We did all this work. We said it comes down to
5 friend birthday is a third of the unit of decline then here's
6 the other different pieces of it.

7 Q So what does that tell Hallmark, how does that inform
8 Hallmark's strategy going forward to try to focus on that
9 occasion, friend's birthday?

10 A That led to the Remembering Campaign that said we know
11 birthdays are important, we know people want to send cards.
12 We'd done the research and people said we love the category.
13 We want to send more cards. They forget. So the Remembering
14 Campaign was about reminding people that a birthday is coming
15 up or an occasion is coming up and remind them to send a card.

16 So we're trying to be good stewards of the category,
17 the category of advertising because we believe if you can get
18 friend birthday just to go up a little bit, this category is
19 going to be a good category to be in.

20 Q Was that information even after the Remembering Campaign
21 had been launched and out there on television still relevant in
22 the fall of 2005?

23 A Absolutely.

24 Q In your position at that time, as one of the team leaders
25 and chief business people at Hallmark, Mr. Strickland, was it

1 part of your job to observe what the competition is doing out
2 there in your market space?

3 A Yes.

4 Q Were you aware of Recycled Paper Greetings in 2005 and
5 2006?

6 A Yes.

7 Q Can you describe for the Court and jury any changes in
8 Recycled Paper's behavior that you were able to observe from
9 2005 to 2006 after the transaction involved in this case?

10 A Recycled Paper made a significant change in their line
11 meaning their greeting cards. Recycled Paper had got into the
12 business and made some in-roads with our retailers with
13 primarily all humor, risque, slightly off color humor that at
14 the time we didn't do. We didn't do. So the retailers who
15 bought Recycled could say we bought that line because that's
16 something Hallmark doesn't do. We wouldn't do risque stuff and
17 I won't talk to you about what it looked like but it's some
18 stuff we didn't do at the time.

19 But in 2005 and beyond, the line changed. The line
20 changed from that humor, risque line to kind of a general line
21 of greeting cards. You had birthday cards. You had thank you
22 cards. It looked like a scaled down line of our cards. It was
23 now a truly acceptable line of greeting cards. Had a lot of
24 friends birthday cards in it. It wasn't all the risque, people
25 would say offensive product.

1 Q Let's go to slide 29, please. What is this analysis
2 telling Hallmark, Mr. Strickland?

3 A We did some work to say if the target is 45 plus with no
4 kids, if that's our target, do they shop where we have
5 customers? Will they, did our top customers have these
6 consumers and they do. You can see over to the right. The
7 left here is Gold Crown and here is 45 plus, no kids in the
8 home, the numbers that go with it. On the right it's talking
9 about where are these 45 plus consumers, that's the blue bar.
10 You can see Gold Crown, Wal-Mart, Walgreens, CVS, Safeway, very
11 high bars. So that's where our core consumer is shopping.

12 It would have been a disaster for us if it said
13 that's our core consumer, that's who we want to go after but
14 she doesn't shop in the stores that we sell to. So, again, it
15 was a reinforcement of we want to do business with these
16 customers and be more aggressive with those customers.

17 Q What does this tell a private equity company looking or
18 thinking about investing some of its funds, money in the
19 greeting card business?

20 A It gives them choices. It tells them that Hallmark is
21 going to be advertising, going to be doing this campaign.
22 They're going after 45 plus. You can ride that. You can go in
23 behind them if you wanted to be a part of that and here's where
24 those customers are shopping. Or you could say I want to do
25 something different if you wanted to. But it tells you where

1 the biggest brand in the company is going to do. Tells you why
2 they're going to do it. Tells you the consumer target they're
3 going after. And it tells you where they're shopping.

4 Q If you have that kind of information you see on this slide
5 together with the financial relationship information we looked
6 at at the beginning of your testimony, how does that give you,
7 as a potential entrant to the market, some insight?

8 A It gives you choices. It tells you what Hallmark is going
9 to do. Then you get to decide, again it's like a playbook.
10 It's like a football team going to the line of scrimmage and
11 the defense knows what play you're going to run every time you
12 run it. It's our secret sauce. You could say run your play,
13 we're going to defend you. You saying we're going to do
14 something very different and we're going to take this terms
15 package to this customer. Or we know you don't service these
16 stores so we're going to offer service packets to these stores.
17 We know you don't get returns on these customers so we're going
18 to get returns on them. They get to choose.

19 Q Go to page 38.

20 Mr. Strickland, this seems to be giving information
21 about Hallmark's top customers. What does this tell a
22 potential competitor?

23 A Well, what this slide showed us was we won't repeat
24 everything I said so far but we said, hey, these top customers,
25 they're a lot of revenue for us and we make a lot of profit on

1 them. What this chart showed us and they're also growing
2 faster than all other customer. So it's not like you've got a
3 customer that, hey, we're making a lot of profit today but
4 they're in decline. We don't think they'll be in business in a
5 few months. These customers are continuing to grow and we
6 think they're going to continue to grow. So it's a validation
7 of the choices that we were making.

8 Q I think we could keep going but let's skip back down
9 towards the end, Cindy. Go to page 100.

10 You spoke earlier, Mr. Strickland, about the white
11 space that you actually, instead of doing it in 2001, 2002 did
12 it very early on in the BMR process. And you see up at the top
13 left of this slide it refers to the white space opportunities?

14 A Right.

15 Q Let's go to the next page.

16 Tell us quickly, still hard to see, but if you can,
17 Mr. Strickland, just tell the Court and jury how this white
18 space or high tech potential segment of the market was
19 evaluated by Hallmark at the time of the BMR?

20 A It's a very busy chart but this chart reflects all the
21 work we did coming up to the December OEC presentation of what
22 Hallmark had done in electronic greetings and technology and
23 resources in pre, not 88, all the way up to 2001. I think
24 there were some people that believed falsely that we hadn't
25 been in that business before. We hadn't been trying to do

1 kiosk or touch screen greetings or e-greetings and all that
2 stuff and we didn't know what to do. Actually we had been
3 doing a lot of work in that before. So we did the analysis.
4 We did not think that all of that white space opportunity
5 represented much of an opportunity for us. We looked at it,
6 put this kind of information together, we vetted it, we talked
7 about it, debated it because, again, some people thought that
8 electronic greetings was going to be the wave of the future and
9 greeting cards were going to be like the buggy whip. People
10 just didn't need them any more. We didn't think that was true
11 for greeting cards. And so we said we're done with white
12 space. We're moving on to implementing the greeting card
13 strategy.

14 Q So Hallmark made a conscience decision coming out of the
15 BMR not to focus resources on electronic greetings?

16 A Not to focus any of our work on white space.

17 Q Texting?

18 A Whatever texting was then but whatever it might be.

19 Q Were there other greeting card companies who chose
20 differently?

21 A Absolutely.

22 Q Like?

23 A Mr. German, I don't think we need the names of the
24 companies but some companies went after more electronic
25 greetings and kiosk greetings and greetings online and all of

1 those kinds of things, thinking that was going to be the growth
2 engine for the greeting card business. We chose not to.

3 Q How about a company called Gibson Greetings?

4 A Yes. Gibson Greetings made a different choice. They went
5 out of business.

6 Q How about Recycled Paper Greetings?

7 A I'm not aware of any online activities Recycled went
8 after.

9 Q In other words, kind of like Hallmark did?

10 A Yes.

11 Q I want to go back for just 30 seconds to that Gold Crown
12 channel. It's the next deck. We spoke earlier and you said
13 that you thought that Recycled Paper Greetings sold its product
14 through the Gold Crown channel stores?

15 A They did.

16 Q I'd like to just show the jury while we're on this point.

17 Your Honor, this is a stipulated exhibit but it kind
18 of fits in here.

19 Mr. Strickland, what you see here is the offering
20 memorandum from William Blair and Company that was sent out to
21 Monitor Clipper and other potential private equity firms
22 interested in Recycled Paper Greetings. It's Exhibit 1023 from
23 July of 2005. And the parties have agreed that this is
24 admissible in this case. I just want to display it to the
25 jury.

1 Could we go to page 3, please? Keep going. Blow up
2 the top paragraph, please.

3 In the description of the business of Recycled Paper,
4 the company, the investment bank noted that the company,
5 Recycled Paper, had significant experience in selling in best
6 of class retailers and they list off a few of them. Some of
7 those are your customers as well, right? Walgreens?

8 A Yes.

9 Q And then there is the Hallmark Gold Crown Stores. Do you
10 see that?

11 A Yes.

12 Q Was the Hallmark channel a significant distribution
13 channel for Recycled Paper? Do you know?

14 A I don't know how big it was. They sold in some of the
15 Gold Crown Stores. I don't remember.

16 Q Recycled Paper had about \$91 million of revenue in 2005.
17 Does that jog --

18 A Sounds about right, yes.

19 Q Any idea how much of that \$91 million revenue would be
20 from Gold Crown?

21 A I do not.

22 Q Let's go to Exhibit 488. We've looked at the three
23 presentations that were attached to the August 25 e-mail.

24 That's Exhibit 487. I want to touch briefly on the two short
25 presentations that were attached to the second e-mail which is

1 Exhibit 488. You've seen this e-mail before Mr. Strickland?

2 A Yes.

3 Q Do you understand that the from and to people here are the
4 Monitor standing case team that worked on the Recycled Paper
5 deal?

6 A Yes.

7 Q Let's go to the first Power Point attachment.

8 Understanding industry trends, August 2001. Do you
9 recall this study?

10 A I do.

11 Q Let's go to page 3, please.

12 AG is American Greetings?

13 A Yes.

14 Q Tell the jury what you're seeing here regarding the study
15 of American Greetings decline?

16 A We were attributing the AG decline to their channel
17 strategy. We believe that the drug stores and supermarkets
18 they had acquired were not the healthiest of those in the
19 channel.

20 Q Next page. AG plus Gibson. Do you see that?

21 A Yes, I do.

22 Q What does that refer to?

23 A Pardon me?

24 Q What does that refer to?

25 A The combined share of American Greetings and Gibson

1 together.

2 Q And what is this analysis telling us about Hallmark's
3 performance compared to American Greetings and Gibson?

4 A It's showing that share remained pretty stable through the
5 early 90s then '97, '98, started getting some distance between
6 the two of us where Hallmark was growing its share of the
7 business and AG and Gibson were declining.

8 Q Next page. Now, in the small competitors deck, explain
9 why this study was done?

10 A Well, again, we're trying to do the most thorough analysis
11 we could do of our business including other competitors. So we
12 looked at, I think there are seven competitors in this analysis
13 as well as the deep discount channel. So we wanted to know who
14 was there? What were their strengths? Who was the best
15 competitors? Do we think the channel is going to grow? Can we
16 make money in the channel? Those kinds of things.

17 Q Cindy, if you would, turn over to page 2.

18 Who were the small competitors that Hallmark studied
19 through this process?

20 A Well, we looked at two groups of competitors. There is
21 the non-discounted competitors which is Paramount and Recycled
22 Paper. Then we looked at a group of discount competitors,
23 Gallant, Tantus, Image Craft, Freedom, Novo Card. So we were
24 looking at, again, there are different ones that sell to non
25 deep discount and those who sell to discount.

1 Q So you actually, part of the BMR actually involved
2 Hallmark's study of Recycled Paper?

3 A Yes.

4 Q Next slide, please.

5 What does this analysis tell the reader about
6 Recycled Paper compared to other small card manufacturers?

7 A Recycled Paper is a strong player in the non-discounted
8 part of the business relative to all the others. If you look
9 at the seven, Recycled Paper, look at the chart a little more
10 carefully here, gives industry size, market share, its average
11 retail pricing and what channels of trade it's sold in.

12 Q Is this information on all of these competitor companies
13 confidential within Hallmark?

14 A Yes.

15 Q Do you know whether RPG, itself, had this kind of
16 information on itself?

17 A No.

18 Q Any of these other companies?

19 A No.

20 Q How did you collect that information?

21 A It says the source is the Hallmark profiler database.
22 Must have been a research division collecting information.

23 Q Let's look at the next slide. Product offerings. That
24 what I was looking for.

25 What does this analysis tell the reader about

1 Recycled Paper Greetings, Mr. Strickland?

2 A This was our evaluation of the five deep discount or
3 discounter greeting card companies and the two non-discount
4 greeting card companies, Recycled Paper and Paramount. It
5 gives the average price. It gives the unit volume. Then the
6 dots across here, themes and quality, is our evaluation of all
7 those companies where we evaluated Recycled Paper higher than
8 Paramount Greetings in terms of being competitive.

9 Q Does this tell somebody like a private equity company
10 evaluating a potential investment that if you're going to buy a
11 greeting card company, Recycled Paper is the number one choice?

12 MR. DONOVAN: Objection, Your Honor, putting in
13 speculation of somebody else.

14 THE COURT: Again, if he knows, I'll allow him to
15 answer. He shouldn't speculate or guess.

16 BY MR. GERMAN:

17 Q If you know, what does this tell somebody looking to make
18 a potential investment in the greeting card industry?

19 A It says Hallmark's evaluating those competitors and it
20 places Recycled Paper pretty high in the pecking order.

21 Q Number 1?

22 A Number 1.

23 Q I'm going to change the subject, Mr. Strickland. Going to
24 try to head towards the finish line here. You were the
25 corporate representative who analyzed one aspect of the damages

1 claim in this case. True?

2 A Yes.

3 Q Explain to the jury what it was that you oversaw in the
4 compilation of information about the damages being claimed in
5 this case?

6 A It was my job to look at the work done by Monitor Company
7 as relates to the greetings business model. How much work was
8 done and how much we paid for it and what that information
9 contained and how much was confidential and how it might be
10 used by someone else outside of Hallmark.

11 Q Have you been, did you oversee the collection of
12 information that attempted to put a dollar value of the fees
13 paid to Monitor for those five presentations we just went
14 through?

15 A Yes.

16 Q And you're prepared to share that with the Court and jury
17 here today?

18 A Yes.

19 Q Now, you worked at some point with an economist that
20 Hallmark retained for the case, Dr. Serwin?

21 A Yes.

22 Q Describe that process for the jury.

23 A I met with Dr. Serwin at least two times. I took him
24 through these five presentations and explained what, the
25 content of the presentations and what it meant. And we spent

1 hours together going through all of these slides and charts and
2 graphs and all that for me to explain what the information
3 meant. Also explained to him how much money we paid to have
4 that work done for us.

5 Q Okay. Now, Dr. Serwin prepared certain charts that
6 displayed the financial information that you provided to him?

7 A Yes.

8 Q Did you have a chance to review and verify the accuracy of
9 those numbers before they were presented?

10 A Yes.

11 Q I'm going to hand you --

12 Don't put it up yet.

13 I'm going to hand the witness Exhibit 547D. Ask you
14 if you can identify that for the Court, please?

15 A Title says Hallmark versus Monitor Clipper, unjust
16 enrichment BMR project cost. It has pricing codes on the
17 left-hand side. It has a Business Model Redesign Project
18 description of five initiatives. And on the right-hand side it
19 talks about the cost of those initiatives.

20 Q All right. Where did the financial information on Exhibit
21 547D come from?

22 A It came from our finance group.

23 Q Who heads that department?

24 A At the time it was Mark Woodward.

25 Q Mark Woodward. Was he involved in the BMR?

1 A He was our day-to-day point person across all the work
2 that Monitor was doing at Hallmark whether it was gifts or some
3 other work that went on. So Mark was the point person who was
4 making sure that we were paying the bills.

5 Q He paid the bills?

6 A Or authorized the bills to be paid.

7 Q And did Mr. Woodward compile the financial information
8 that you see on this exhibit at your request?

9 A Yes.

10 Q And you gave that information to Dr. Serwin?

11 A Yes.

12 Q Does this exhibit then, 547D, fairly summarize the
13 financial information that the Hallmark finance department
14 compiled at your request on the fees paid for these five
15 presentation for the BMR?

16 A Yes.

17 MR. DONOVAN: Objection. The last question was fees
18 paid for the five presentations. He already testified this is
19 fees paid for the whole BMR project.

20 MR. GERMAN: That's correct. So let me ask the
21 question again.

22 BY MR. GERMAN:

23 Q Does Exhibit 547D fairly summarize the information from
24 the Hallmark finance department for the fees paid for the
25 entire Business Model Redesign project?

1 A Yes.

2 MR. GERMAN: With that, Your Honor, I offer 547D.

3 MR. DONOVAN: Objection.

4 THE COURT: I'll tell you what. Let's take our last
5 break today.

6 Why don't we see you back here at 3:30 and then we'll
7 run until 5:00. We'll be in recess. Don't talk about the
8 case.

9 (Witness temporarily excused.)

10 (The following proceedings were had OUT OF THE
11 PRESENCE AND HEARING OF THE JURY:)

12 THE COURT: Before we get to the objection, Charlie,
13 I don't see this exhibit identified on your exhibit list.

14 MR. GERMAN: Your Honor, it is one page out of
15 Exhibit 547. 547 were all of the schedules, what are called
16 the updated and revised schedules. And that's the entire,
17 like, expert report quantification analysis.

18 THE COURT: Okay.

19 MR. GERMAN: The portions of those schedules that
20 represent the fees on the BMR project was Mr. Strickland's
21 project. The portion of those schedules that represent the
22 research costs, that was Mr. Maynard, another Hallmark witness,
23 that was his project. So what we were going to do since they
24 provided that information was just take those three exhibits
25 for him and two for Mr. Maynard and have them authenticate the

1 information that went to Dr. Serwin so that when Dr. Serwin
2 testifies, that information that he got from Hallmark, was
3 provided by Hallmark is already in. That's what we were
4 already doing.

5 MR. DONOVAN: Objection is, first on the top of that,
6 highly confidential source, protective order. So that
7 shouldn't be on the document.

8 Two, it's a hearsay document. It's part of an expert
9 report. It's double hearsay, actually. He's saying somebody
10 else prepared it. He got it. He provided it to Dr. Serwin.
11 That's fine using it. It's fine for Dr. Serwin to get up and
12 testify that this is what he received but it's not evidence.

13 THE COURT: If Mr. Woodard -- Woodward, is he going
14 to testify?

15 MR. GERMAN: He's not.

16 THE COURT: Well, I think for the moment I'm going to
17 reject the exhibit. As such that doesn't mean that Dr. Serwin
18 can't testify that he relied upon the exhibit or the amounts
19 involved in the exhibit but I'll sustain the objection.

20 MR. GERMAN: Okay. Then what I think I'll do, Your
21 Honor, is just ask Mr. Strickland to give us the gross numbers
22 without offering the document. Because he did, that
23 information did come from him. He doesn't even have to look at
24 the document.

25 MR. DONOVAN: Your Honor, may I be heard?

1 THE COURT: Sure.

2 MR. DONOVAN: I don't see how that changes that it's
3 still hearsay. It's verbal hearsay instead of written hearsay
4 at that point. I don't know, he can say that he provided
5 information to Dr. Serwin but for him to say that he got
6 information of numbers from somebody else and then passed that
7 along to someone else, again, it's just hearsay. It's double
8 hearsay.

9 THE COURT: I understood that he compiled the numbers
10 and gave them to Woodward and that Woodward recorded them and
11 gave them back. Is that not correct?

12 MR. GERMAN: We were asked to provide a 30(b)(6)
13 witness on a portion of the damages that represented avoided
14 consulting fees. He was the witness. He compiled, as a
15 30(b)(6) witness, the information that Hallmark paid to
16 Monitor, brought it down to the five presentation that we're
17 here about. It's \$12 million for the whole BMR project.
18 \$5 million for the work fed into these five presentations. He
19 then appeared as the corporate rep, gave a deposition on all
20 those issues, the underlying billings and invoices that lead
21 into there. That's what I'm going to ask him to say.

22 MR. DONOVAN: I'm fine with him asking those
23 questions but at the deposition he said that he didn't prepare
24 it. That Mr. Woodward prepared it and provided him the
25 numbers.

1 THE COURT: If he was Hallmark's 30(b)(6) witness to
2 testify as to those damages, I'll allow him to give the number.
3 Overruled.

4 See you back here in 10 minutes.

5 (Recess)

6 (The following proceedings were had OUT OF THE
7 PRESENCE AND HEARING OF THE JURY:)

8 MR. GERMAN: Your Honor, I just informed the counsel
9 there was a newspaper reporter in for about the last three
10 minutes of Mr. Strickland's exam, nothing about the
11 presentations. We've explained the rule in effect and he left.

12 THE COURT: Okay. You'll have to let us know that
13 because we have no idea who is reporting, who is just
14 spectating.

15 MR. GERMAN: I just turned and saw him.

16 (The following proceedings were had IN THE PRESENCE
17 AND HEARING OF THE JURY:)

18 WAYNE STRICKLAND, RESUMED

19 THE COURT: Please be seated.

20 Mr. German, you may continue.

21 MR. GERMAN: Thank you, Your Honor.

22 CONTINUED DIRECT EXAMINATION

23 BY MR. GERMAN:

24 Q Mr. Strickland, how much did Hallmark pay to Monitor for
25 the entire Business Model Redesign project?

1 A \$12 million.

2 Q I'm sorry?

3 A \$12 million.

4 Q Of that \$12 million, how much of that represents the work
5 done on the greetings business that we've examined here today?

6 A \$5 million.

7 Q Does that \$5 million for the greetings project represent
8 all the costs incurred on that project?

9 A The \$5 million represents what we paid to get the work
10 done. It didn't represent the hundreds and hundreds of hours
11 of people at Hallmark that worked on this project for all this
12 time in addition to their full-time jobs and all the work that
13 didn't get done because we were doing this for all that period
14 of time. So it's a fair and reasonable estimate of the money
15 we paid for the work that got done for the greetings business
16 model.

17 Q And is it your testimony that the \$5 million is the cost
18 that Hallmark paid for the five presentations that we've looked
19 at here today?

20 A \$5 million is what we paid for those five presentations.

21 Q And the work that flowed into them?

22 A And the work that flowed into them.

23 Q What does that \$5 million represent in this case?

24 A \$5 million is what Monitor Clipper avoided --

25 MR. DONOVAN: Judge, may we approach?

1 THE COURT: Yes, approach.

2 (COUNSEL APPROACHED THE BENCH AND THE FOLLOWING
3 PROCEEDINGS WERE HAD:)

4 MR. DONOVAN: Your Honor, this is what we were
5 talking about earlier. They have a damages expert. Their
6 interrogatories said the damages expert was Dr. Serwin. He
7 would be the one talking about the quantification of
8 calculation of their unjust enrichment damages. He has an
9 expert report on the issue. We took his deposition on the
10 issue. We filed a brief with Your Honor before the hearing
11 before, I think it was last week, for trial on the damages
12 issue where we laid out clearly what his report says and what
13 his deposition testimony says. And there does not say that the
14 defendant in this case, Clipper, avoided those costs when --
15 what it says is a group of companies which includes RPG, RPG
16 Holdings, RPG Investments and Fund II, that that grouping
17 avoided the cost. And that they're stuck with that.

18 If today he testifies that Clipper avoided the cost,
19 that is a new theory to this case that we have -- has not been
20 part of this case before nor have we been able to conduct
21 discovery on that new theory. That's what we have filed with
22 Your Honor, I think a little bit earlier.

23 MR. GERMAN: First of all, that's just not correct.
24 Dr. Serwin's report didn't -- made no such statement. This
25 issue of joint and several liability, Serwin's report never

1 uses that term joint and several liability was -- our response
2 to the defendant saying, well, it wasn't really Clipper, it was
3 this company or this company or that company, we said it
4 doesn't matter. That's really not what we're talking about
5 here with this witness. That will be for Dr. Serwin. That was
6 the argument made on the motion for summary judgment and they
7 said we had no damages. The Court rejected that. That was the
8 argument they made in the Daubert motion against Serwin's
9 testimony. The Court rejected that. That was the argument
10 they made in the motions in limine saying that as a matter of
11 law he couldn't testify. The Court rejected that.

12 Now you have said that we have to limit our evidence
13 of avoided costs to Clipper and Doctoroff. We're prepared to
14 do that. At the time of the due diligence process Clipper and
15 Doctoroff were the only ones there at the time these costs
16 would have been incurred to hire the consultants. They're the
17 only ones there. These RPG entities didn't exist then. It's
18 not a new theory.

19 They asked us to provide a 30(b)(6) witness on this
20 very issue, on the question of avoided costs and fees, we've
21 appointed him. That's what he said. Serwin says the same
22 thing.

23 THE COURT: I think what we're going to do is defer
24 this discussion for a later day. I'm going to sustain the
25 objection to this witness that Clipper avoided those costs. If

1 Serwin wants to testify to it, I'll reconsider it at that time.

2 Objection sustained.

3 (THE PROCEEDINGS RETURNED TO OPEN COURT.)

4 THE COURT: The jury will disregard the witness's
5 answer that Monitor Clipper avoided 5 million dollars in costs.

6 BY MR. GERMAN:

7 Q So the \$5 million, Mr. Strickland, is the money that
8 Hallmark paid to Monitor for those five presentations we just
9 went through?

10 A Yes.

11 MR. GERMAN: That's all.

12 THE COURT: Cross-examination?

13 MR. DONOVAN: Your Honor, I have one issue I would
14 like to approach the bench about based on the testimony.

15 THE COURT: Step up.

16 (COUNSEL APPROACHED THE BENCH AND THE FOLLOWING
17 PROCEEDINGS WERE HAD:)

18 MR. DONOVAN: His testimony, he had just testified to
19 two issues. Interrogatory response No. 5 and No. 7 were
20 questions put to him. If you claim defendants use of any
21 Hallmark trade secret impacted in any way Hallmark's revenue or
22 profitability of business relations with any retailer. And
23 they say, I mean, Hallmark does not assert a claim that the
24 defendant's use of any Hallmark trade secret information
25 impacted retailer. He just testified their relations with

1 terms with the retailers, the fact they could be harmed by the
2 fact some competitor now has that information. This put this
3 to bed. When the interrogatory answers, what are the claims in
4 this case? What are the issues we need to conduct discovery
5 on? The claims, we're not asserting any claim for that.

6 Likewise with No. 7. They say Hallmark has no
7 evidence at this time that Clipper received any of Hallmark's
8 terms of sales with Hallmark's customers. Now he's just
9 testified that, in fact, they received terms of sale with
10 Wal-Mart. He's up here saying he's in charge of the Wal-Mart
11 account. He had that slide that said Wal-Mart on it. Now he's
12 testifying about the terms of sale with Wal-Mart which is a
13 retailer, one of their customers. They've now interjected
14 these into the case. I mean there's only two options here.
15 One we move to strike it or, two, if Your Honor is not inclined
16 to do so, we have to be able to question him on these issues.
17 He's now saying they had their terms of sale. They could be
18 harmful to them. But I don't want to do that with the
19 discussion we had this morning. Obviously, I want to raise the
20 issue with Your Honor.

21 MR. GERMAN: He didn't say they had been impacted.
22 He said a potential competitor might be able to. He did not
23 say that we have lost sales. He did not say we've lost
24 profits. Purposely stayed away from that because of this very
25 discussion.

1 The interrogatory answers, they questioned Don Hall
2 about it. They can question him about it. Specific contract,
3 Walgreen contract, CVS contract, Wal-Mart contract. The slide
4 they've had since 2005 shows channel information, gross costs,
5 the obsolescence and the returns, the discounts, the fixtures,
6 the labor costs. It's not our deal. It's not our deal with
7 Wal-Mart. It's our cost to serve and the margins we make based
8 on the revenues. It's financial information to be sure but
9 it's not our contract with Wal-Mart or any of those customers.
10 And that Gold Crown channel analysis has been, that's one of
11 what we call the smoking gun e-mails. It's in the case from
12 the very beginning. Certainly no surprise to them. We have
13 not made a claim for lost profits. We're not making a claim
14 for lost profits. He did not say we lost profits. Did not say
15 we lost sales. He just said a company thinking about an
16 investment in the space with this kind of information would
17 have insights not publicly available and could make decisions.

18 MR. DONOVAN: What he said, it could be harmful to
19 Hallmark to have competitors have that information in their
20 possession. They could use it against Hallmark. True. Doing
21 a little semantics. True. Didn't use the word profit. But
22 the interrogatory doesn't say that. It says impacted. Assert
23 a claim that use of any of the trade secrets impacted revenue
24 profitability. What they're trying to say, yes, if a
25 competitor had this, that would be harmful to us. Could impact

1 us. They didn't take the next step and say that happened.

2 THE COURT: Well, I don't think the door has been
3 opened, Michael, so my ruling remains the same. Stay away from
4 the issue of lost profits.

5 MR. DONOVAN: What about impact?

6 THE COURT: You can ask him what impact there was, if
7 you want to.

8 MR. DONOVAN: Thank you.

9 MR. GERMAN: Impact. Okay.

10 Just so we don't get ourselves in trouble, impact, I
11 think to be fair, to ask Mr. Strickland about potential impact
12 and how somebody with this information which is what he said
13 might have insight.

14 THE COURT: Have a competitive advantage.

15 MR. GERMAN: We have not claimed impact. This
16 information is on the unjust enrichment side. This would be
17 information you have to go out and try to acquire somewhere
18 else and pay the cost.

19 THE COURT: I'm going to allow the defendant to
20 inquire whether this witness can testify there was not a
21 financial impact at Hallmark. His answer is going to be no but
22 I'll allow the question.

23 MR. GERMAN: Okay.

24 (THE PROCEEDINGS RETURNED TO OPEN COURT.)

25 CROSS-EXAMINATION

1 THE COURT: When you're ready, Mr. Donovan.

2 BY MR. DONOVAN:

3 Q Good afternoon, Mr. Strickland. How are you?

4 A Good. Good afternoon.

5 Q I want to go over some of the questions and answers that,
6 that's gone on this afternoon. And I want to start with you
7 went through a lot of these slides from these five
8 presentations. And then Mr. German asked you kind of the
9 Seminole question which was, well, what was the results of the
10 BMR? And what I believe you said was, it was the growth
11 strategy, is that right?

12 A Yes.

13 Q And he said that that was, in fact, the business strategy
14 coming out of the BMR, going forward for Hallmark, correct?

15 A Yes, sir.

16 Q And you identified four aspects to that. The first that
17 the target consumer was 45 and older women with no kids,
18 correct?

19 A Yes.

20 Q And the second was that you were going to advertise the
21 category as opposed to advertising the brand, correct?

22 A Yes.

23 Q And the third was that you were going to group customers
24 into suites and you were going to focus on the top 15
25 customers?

1 A Yes.

2 Q In fact, there was a slide showing from the customers that
3 the top twelve were 85 percent of the revenue for Hallmark,
4 correct?

5 A Yes.

6 Q Then the fourth one you said was to focus on those top
7 customers?

8 A Yes.

9 Q That business strategy, that growth strategy was not
10 confidential after the BMR was completed, isn't that correct?

11 A I thought the growth strategy was confidential after the
12 BMR, yes.

13 Q You thought it was?

14 A Yes.

15 Q But didn't, in fact, to make the growth strategy work
16 didn't Hallmark go out and advertise what that growth strategy
17 was?

18 A Hallmark advertised, if they placed ads in the Remembering
19 Campaign that is part of our advertising strategy, yes.

20 Q And, in fact, they went out and they publicized in the
21 Noon News, didn't they?

22 A Yes.

23 Q So if we could look at Defendant's Exhibit 269.

24 First page there, you see it says business model
25 decisions will change how we work. Then there is an article

1 about the results of the BMR, correct?

2 A Yes.

3 Q And then the second page. CEO perspectives over there on
4 the left.

5 If we could blow that up. Keep going down.

6 Okay. There it says, North America has identified
7 and begun focusing on four priorities, greetings, gifts, party
8 and Hallmark Gold Crown, the preliminary step in creating four
9 business model initiatives in turning around our business
10 performance. This is the comments on what is coming out of the
11 BMR, correct?

12 A Yes.

13 Q And the next in bold there it says what we learned. That
14 means what we learned from the BMR, correct?

15 A Yes.

16 Q Then the data says, during this period, that meaning the
17 period of the BMR process, we learned much about what works and
18 what doesn't. Then it gives bullet points.

19 If you can pull that up a little bit, Jeff.

20 Then it says, we learned that our \$12 billion goal
21 and array of new business ventures were distracting us from
22 pressing short term concerns. Right? That was what you were
23 describing earlier, decided not to go forward with the white
24 space issues?

25 A What I was talking about was the greetings business model.

1 I think this is reflective of all of the work that was done.

2 Q Okay. The next bullet down, we learned that we can't take
3 our eyes off the heart of our business, specifically greeting
4 cards, the Hallmark Gold Crown network and the women of 45 and
5 older who have been our most loyal buyers of greeting cards.
6 So that's the target consumer that came out of the BMR process,
7 correct?

8 A Yes.

9 Q Then the next bullet, we learned that we must advertise
10 the emotional benefits of sending and receiving greeting cards.
11 Right? That was part of the BMR as well, right, the equity
12 advertising?

13 A Yes.

14 Q And then if we can go over to the right there is a box up
15 there that said, businesses to implement unique strategies.
16 Again, that would focus just on the greetings because the five
17 presentations you testified were just part of the greetings
18 module of the BMR, right?

19 A Yes.

20 Q And there were other modules of the BMR, is that correct?

21 A Yes.

22 Q Do you recall what some of those were?

23 A Gold Crown, gifts, party, I can't remember.

24 Q And there under the greetings it has four bullet points.
25 First one, target consumer is women age 45 and older with no

1 children at home. That's the first bullet point you gave us as
2 the business strategy coming out of the BMR, right?

3 A Yes.

4 Q This is exactly what you just testified to. This is the
5 road map of where Hallmark is going to go based off the results
6 of the BMR?

7 A Yes.

8 Q This is not confidential, is it?

9 A It is.

10 Q This is confidential?

11 A Yes.

12 Q The Noon News?

13 A Yes.

14 Q It's a confidential document?

15 A Yes.

16 Q That's your personal opinion?

17 A It's the company's opinion.

18 Q I'm at just a little bit of a loss because we had the CEO
19 here before you who had a different opinion. That's why I'm
20 trying to understand whether it's the company's opinion or your
21 personal opinion?

22 A I've also felt the Noon News is confidential information.

23 Q So that's your personal opinion?

24 A That's my opinion.

25 Q Okay. But the Noon News, we had a deposition of you,

1 correct, Mr. Strickland?

2 A Yes.

3 Q And you agreed with us that the Noon News is mailed out to
4 former employees, correct?

5 A I think so, yes.

6 Q And so those employees aren't under any confidentiality
7 obligation to Hallmark after they've left Hallmark, correct?

8 A No.

9 Q And the Noon News is put out around Hallmark offices and
10 any visitor can come in and get a copy of the Noon News,
11 correct?

12 A Yes.

13 Q But even though there are those facts you still construe
14 the Noon News as a being a confidential document?

15 A I do, yes.

16 Q Are employees allowed to take it out of Hallmark's
17 offices?

18 A Yes.

19 Q Is there any restriction on them sharing it with their
20 family members?

21 A I don't think that would be using good judgment.

22 Q Is there any actual company policy that they're not
23 allowed to?

24 A Not that I'm aware of, no.

25 Q Is there any company policy they're not allowed to share

1 with non family members?

2 A No. Other than you have an employment agreement and you
3 go to work saying that you can't share confidential
4 information.

5 Q Correct. And then your personal view is that the
6 information that's put in the Noon News is confidential?

7 A Yes.

8 Q And is that, I'm trying to get the scope of it, is that
9 every piece of information that's in the Noon News or only some
10 information that's in the Noon News is confidential?

11 A It would be some. I don't think employee's birthdays and
12 anniversaries would be confidential.

13 Q So the document itself overall is not confidential.
14 You're just saying that you believe that there is information
15 within the document that is confidential?

16 A Yes.

17 Q And in this case this document, let's turn to the third
18 page. Is the information on that page confidential?

19 A Actually all the information in the Noon News is
20 confidential. I don't share it with anyone outside of
21 Hallmark. That's my view of it.

22 Q But I'm trying to ask whether you construe all the
23 information on the third page as being confidential?

24 A I believe it's confidential. I wouldn't share it outside
25 of Hallmark.

1 Q Okay. So back to the second page, that box under
2 greetings. The second bullet down, category growth strategy.
3 Remembering advertising is being used to increase
4 participation. That's another thing that came out of the
5 Remembering Campaign as a result of the BMR process, correct?

6 A Yes.

7 Q And at this time, which is September of 2002, that
8 Remembering Campaign has already been going on?

9 A Right.

10 Q That's been communicated out to the market place, isn't
11 that right?

12 A Yes.

13 Q The next bullet, suites are aligning the business plans
14 with five key strategies for our top retailers. That's what
15 you mentioned as being one of the strategies that came out of
16 the BMR, correct?

17 A Yes.

18 Q So this document is setting forth what the actual
19 strategies were coming out of the BMR, right?

20 A Yes.

21 Q Okay. Then if we could pull up Defendant's Exhibit 267.
22 And if we could blow up down at the bottom it says what
23 decisions have been made? Last question and answer, yes.

24 Now, this is a question and answer. It says what
25 decisions have been made? And the answer -- paragraph. Then

1 it says greetings. Women 45 and older who have no children at
2 home will be our target consumers, right? That's the BMR
3 again?

4 A Yes.

5 Q Then it says because we've seen a significant drop off in
6 card sending within this group. That's what you pointed out in
7 one of the other slides, right? There was a bar, there was a
8 graph there that showed the lines and it showed drop off in the
9 last 2 years in that particular group, 45 and older women,
10 correct?

11 A Yes.

12 Q So this now is disclosing what the results were of the
13 research that had been done about what was the trend that was
14 going on with certain demographics within people that buy
15 greeting cards, correct?

16 A Yes.

17 Q And that drop off was back between, putting a time frame
18 on it was '99, 2000, correct?

19 A Yes.

20 Q Before that, if I remember the chart correctly '97, '98
21 was pretty flat?

22 A Yes.

23 Q And the issue here, the presentations that Hallmark
24 alleges were taken was in the summer of 2005, correct?

25 A Yes.

1 Q So that's 5 years later, right?

2 A Yes.

3 Q So there's no data here that says anything about what is
4 going on or what the drop off is between 2000 and 2005?

5 A No.

6 Q And there was no such data in the presentations, was
7 there?

8 A No.

9 Q And the chart that we looked at, went from '97 to 2000 so
10 it showed a four-year period. Do you recall that?

11 A Yes.

12 Q And was that four-year period significant? In other
13 words, were you involved? Why did they pick four years?

14 A I don't remember why we picked four years.

15 Q Then it says we will spend more marketing dollars to
16 remind consumers to send cards. That's a direct result of the
17 BMR, right?

18 A Yes.

19 Q I mean, these all are. These are decisions that came out
20 of the BMR, right?

21 A Yes.

22 Q And that's marketing dollars, that's the chart we showed
23 before that talked about the marketing dollars, right? You
24 talked about where do we want to spend those marketing dollars,
25 right?

1 A Yes.

2 Q Now, this is saying we want to spend them to remind
3 consumers to send cards, right?

4 A Yes.

5 Q That's send cards. Just any old card? Right? It's not
6 reminding them they need to buy a Hallmark card versus an
7 American Greetings card?

8 A Well, we would certainly prefer they buy a Hallmark card,
9 yes.

10 Q Yes. But the theory was, wasn't it, Mr. Strickland, that
11 if you rise the full category what was Hallmark's market share
12 at that point?

13 A In the 50 some, guessing.

14 Q So if you rise it to two more cards get bought, then
15 Hallmark is using the odds to say at least one of them will be
16 a Hallmark card that gets bought, right?

17 A Yes.

18 Q So this whole theory, I think what you said before was in
19 fact what came out was just to rise the whole category. Let's
20 just get people to buy cards. Let's not worry about what card
21 they buy. Correct?

22 A We did worry about what card they buy. We'd prefer them
23 to buy a Hallmark card but, yes, we wanted to grow the
24 category.

25 Q And by growing the category that would sell more Hallmark

1 cards?

2 A Yes.

3 Q So it was a win win?

4 A Yes.

5 Q And so now this is saying that to do that we're going to
6 remind consumers to send the cards and then we have based the
7 Remembering ad campaign on this decision. So the Remembering
8 ad campaign was going to implement what the BMR results were,
9 correct?

10 A Right.

11 Q Then the last one there says we will focus most of our
12 efforts on our top retailers, those who provide above
13 90 percent of our revenues in our designing suites, product
14 service and marketing groups to support these retailers and
15 strategies. And that was the last bullet you were given,
16 right? That you were going to focus on those 15 accounts?

17 A Yes.

18 Q So, again, this is articulating, it's all out in the Noon
19 News, that's being put out, being mailed out to former
20 employees, being distributed and put out where anyone can pick
21 it up at any of Hallmark's offices, correct?

22 A Yes.

23 Q Are you familiar with the Greeting Card Association?

24 A I know what it is.

25 Q Can you tell us what it is? What's your understanding of

1 what it is?

2 A I've never been to the Greeting Card Association. I've
3 known people who have gone to the Greeting Card Association. I
4 think it's a group of suppliers that make greeting cards,
5 trying to make decisions in the best interest of the greeting
6 card business.

7 Q And could you put up Defendant's Exhibit 589, please?

8 Have you seen this document before, Mr. Strickland?

9 A I don't think so.

10 Q I've placed that in front of you so you can take a look at
11 that, if you don't recognize the cover. So it's a Power Point
12 and the title page says category growth initiative and it says
13 prepared by Hallmark. Do you see that?

14 A Yes.

15 Q Category growth initiative, again, is the same phrase
16 we've been using as what came out of the BMR at Hallmark,
17 correct?

18 A Yes.

19 Q Turn to the second page.

20 A Okay.

21 Q That was a business problem that was faced and was tackled
22 by engaging in the BMR, correct?

23 A Yes.

24 Q And the women 45 and older we've talked about, correct?

25 A Yes.

1 Q Then the next page, these are some of the issues that came
2 up in the BMR, some of the findings, right, the third line in
3 particular, need to convince them why greeting cards are worth
4 the effort?

5 A Yes.

6 Q Next page. This one is titled what consumers told us.
7 Conducted research in late 2001 to find why consumers are using
8 substitutes. That was what was done in the greetings part
9 module of the BMR, correct?

10 A Yes.

11 Q And in the next bullet, they don't believe they're
12 substituting new forms of communications for cards.

13 Next bullet, when pressed they admitted to
14 occasionally forgetting. Do you see that?

15 A I do.

16 Q Then the last one, asked us to remind them of benefits.
17 That was what the research said came out of the BMR, correct?

18 A Yes.

19 Q And that last bullet, asked us to remind them of benefits,
20 is in fact what Hallmark decided that was going to be their
21 strategy, correct?

22 A Yes.

23 Q That's the next page, the opportunity. Remind consumers
24 of the emotional benefits of sending a card.

25 Second bullet, create an advertising campaign that

1 the emotional benefits of sending a card, only a greeting card
2 can deliver the emotional impact. That was the Remembering
3 Campaign?

4 A Yes.

5 Q And this was all being disclosed to the GCA, correct?

6 A I wasn't there.

7 Q Okay. And the GCA is made up of suppliers in the industry
8 meaning other companies that are manufacturing and selling
9 greeting cards?

10 A Correct.

11 Q So now the competition knows what the category growth
12 initiative is and what is being done by Hallmark, correct?

13 A I think they know what our advertising strategy looks like
14 or advertising campaign looks like.

15 Q And the reasons why, right?

16 A Yes.

17 Q Plaintiff's Exhibit 44.

18 I've placed in front of you what's marked as
19 Plaintiff's Exhibit 44. Have you seen this document,
20 Mr. Strickland?

21 A I have.

22 Q In what context have you seen this document?

23 A In preparing for this testimony.

24 Q And what is your understanding of what this document is?

25 A This is a document that Monitor sent to Monitor Clipper.

1 Q No. If you look at the names --

2 Blow it up a little bit more.

3 It's Mr. Pauker?

4 A Mr. Pauker.

5 Q Part of Monitor?

6 A Yes.

7 Q Mr. Brown and Ms. Kahn are also part of Monitor?

8 A Okay. Excuse me.

9 Q And if we go down to the text, Jeff.

10 Now, you talked about these five presentations today
11 and have gone through those presentations. This e-mail here
12 says, Megan and I went through the documents from Levin and I
13 have tried to condense the most salient info into the following
14 30-slide deck. Note, MCP staff are not included in this
15 e-mail.

16 So this is Monitor saying what is the most salient
17 information from those presentations down to a 30-slide deck.
18 So from all the pages that we looked at before, Monitor has now
19 taken it and said, there's only 30 of them that we feel are
20 salient. Have you looked through this document? You said
21 you've gone through this document before, correct?

22 A I believe so, yes.

23 Q And did you notice that there is no information in here
24 from the Gold Crown presentation at all?

25 A Let me look at it. Actually there are a couple of slides

1 from Gold Crown.

2 Q Couple slides what?

3 A That mention Gold Crown.

4 Q No, I didn't say it mentioned Gold Crown. But that came
5 from the Gold Crown presentation?

6 A Excuse me. No, there's not.

7 Q And therefore Monitor concluded that those weren't salient
8 slides for their purposes?

9 MR. GERMAN: Objection.

10 THE COURT: If he knows he can answer. If he doesn't
11 know he can say so.

12 THE WITNESS: I just know what is contained in this
13 e-mail. I don't know their assessment of their slides.

14 BY MR. DONOVAN:

15 Q The Remembering Campaign started, we've had testimony,
16 before Mother's Day of 2002. Does that sound right to you?

17 A Yes.

18 Q How long did that go on?

19 A I don't remember, nine or ten months.

20 Q And did it work?

21 A I thought it worked, yes.

22 Q In what way?

23 A Well, we had a lot of measures that we were keeping track
24 of. And I thought the campaign was working but I can't recite
25 all those measures and--

1 Q Was one of the goals to stop the decline in the 45 and
2 older women with no kids?

3 A Yes.

4 Q Did they track whether that, in fact, occurred?

5 A I believe so but I don't remember what the results were.

6 Q And why was it stopped after nine or ten months?

7 A My understanding was we had to re-deploy those resources
8 toward the Gold Crown channel. That we needed more focus on
9 Gold Crown because I believe the Christmas of 2002 they did not
10 have a very good Christmas season. They under-performed. And
11 we chose to take money from the greetings advertising campaign
12 and direct it toward the Gold Crown channel. That's my
13 understanding.

14 Q That was the end of the Remembering Campaign?

15 A Yes.

16 Q So the money that had been set aside for that was then
17 diverted into Gold Crown, is that right?

18 A Yes.

19 Q Now, if we could go to Plaintiff's Exhibit 485, page 114.
20 And if we could blow up down at the bottom. Actually if you
21 could blow the whole thing up, please.

22 So, again, I don't want to belabor the point. This
23 is the OEC presentation. This is the page that has the
24 decisions of the greetings module of BMR, correct?

25 A I'll take your word for it, it came out of the OEC

1 presentation. I don't remember exactly but these look like
2 those decisions, yes.

3 Q The first one says, goal for the next 24 months is
4 category stabilization, not market share growth. That's what
5 we talked about rising the whole category, correct?

6 A Yes.

7 Q Not focusing on Hallmark's brand, correct?

8 A Just growing the category, yes.

9 Q In place of, I mean there are other ways to have strategy,
10 strategy could be to have people change buying other cards to
11 change to buying Hallmark Cards. That would be a brand
12 strategy, correct?

13 A We chose to grow the category. That was the Remembering
14 Campaign strategy was to grow the category. We did other
15 things, too, but that was the focus of our advertising efforts.

16 Q And there it says that was the goal for the next 24
17 months. Do you see that?

18 A Yes.

19 Q So that the BMR was setting forth what the strategy was
20 going to be for two years, is that right?

21 A This part of the decision for the next 24 months, yes.

22 Q Then down at the very bottom there --

23 If you could blow that up a little bit.

24 Says second phase marketing plans may be needed post
25 24 months to reach emerging consumers, women less than 45. Do

1 you see that?

2 A Yes.

3 Q So, again, this is telling us that the results of this BMR
4 and the course that Hallmark is going to go on is a 24-month
5 course. Then at that point we're going to need the next phase
6 of whatever we're going to do. Isn't that fair to say?

7 A For the advertising campaign, yes.

8 Q Is that, in fact, what ended up happening, Mr. Strickland?

9 A No. The Remembering Campaign didn't last that long. We
10 re-deployed the money.

11 Q It lasted less than 24 months?

12 A Yes.

13 Q Now, Mr. Strickland, you talked a lot when Mr. German was
14 asking you questions about what could be done with information
15 in the presentations by a competitor, is that right?

16 A Yes.

17 Q You have no knowledge that anything was actually ever done
18 by Clipper with any information, correct?

19 A They bought Recycled Paper.

20 Q Anything else?

21 A Recycled Paper got more aggressive in the market place.

22 Q Anything else?

23 A No.

24 Q Now, after the BMR there continued to be consultants
25 brought in to Hallmark, isn't that right?

1 A Yes.

2 Q And as we saw it was going to be a short life for the
3 advertising campaign coming out of the BMR. There was going to
4 have to be some new marketing that was going to be developed
5 for the greetings area, correct?

6 A Yes.

7 Q So -- in an effort to expand upon that BMR and brought in
8 further consultants, correct?

9 A Ask the question again, please?

10 Q Sure. It expanded upon what ever was done in the BMR and
11 it brought in further consultants to do more consulting work
12 for Hallmark?

13 A Yes.

14 Q One of those was called a Business Transformation Project,
15 correct?

16 A Yes.

17 Q That's different from the BMR, Business Model Redesign,
18 right?

19 A Right.

20 Q It sounded awfully similar. And in that project that was
21 started shortly after the BMR, is that right?

22 A I think Business Transformation started years after BMR.

23 Q But before 2005?

24 A I don't remember the start date.

25 Q And that was a major project, wasn't it?

1 A Yes.

2 Q It was a big undertaking for Hallmark?

3 A Yes.

4 Q And they hired MacKenzie and Company to do that with them,
5 correct?

6 A Yes.

7 Q How long did that project take?

8 A I don't remember.

9 Q What was the cost of that project?

10 A I don't know.

11 Q Were you involved in that project?

12 A Yes.

13 Q What was it that project did?

14 A I'm sorry?

15 Q What was it that that Business Transformation Project did?

16 A I worked on the customer side of the industry.

17 Q Because generally you're always working on the customer
18 side versus the consumer side, right?

19 A Generally speaking, yes.

20 Q And then another one that came up was called the Category
21 Management Project, correct?

22 A Yes.

23 Q And if I remember correctly back when you were listing
24 some of your prior positions, one of them was vice president of
25 category management?

1 A Yes.

2 Q Was it during that time that this project was put
3 together?

4 A I don't have my time lines quite right. I can't remember
5 if I was vice president of customer strategy or the vice
6 president of category management. I don't remember when it
7 started, what I was doing at the time.

8 Q Okay. Maybe I have some documents that may help.

9 A Sure.

10 Q Put up Defendant's 541. And could we go to page 8?

11 Can you read that all right, Mr. Strickland?

12 A Can you bring it up a little bit. Okay. I got that.

13 Q So that this is part of a lead-in here, I guess. To do
14 this project Hallmark went out and interviewed various
15 consultants, correct?

16 A Which project is that?

17 Q Category management?

18 A Yes.

19 Q And included in that was the Partnering Group?

20 A Yes.

21 Q And the New England Consulting Group?

22 A Yes.

23 Q I think it was Boston Consulting Group was another one?

24 A Yes.

25 Q Were there any others you recall?

1 A I thought there was a Meridian.

2 Q And were you involved in this selection of who was going
3 to do this project for Hallmark?

4 A Yes.

5 Q And who else was involved in that?

6 A A man by the name of Faneel Jackatonny.

7 Q And who decided that they were going to have this project,
8 category management?

9 A Who chose the consultant or --

10 Q No. Who decided there was going to be a project and we
11 were going to bring consultants in? Was that you?

12 A No, it wasn't me. It was, I got a call from Don Fletcher
13 one day. He had been to a board meeting. We had a man on the
14 board named Bill Perez. Bill was the CEO of SC Johnson at the
15 time. And Bill thought we weren't doing strong enough category
16 management work. So at the board meeting he told Don and Don,
17 that's Don Fletcher and Don Hall, that we needed to step up our
18 game in category management. They assigned me and
19 Mr. Jackatonny to research some outside consultants that could
20 come help us develop those practices for category management.

21 Q Can you explain what you mean when you use the phrase
22 category management?

23 A Category management is a process that suppliers go through
24 that tries to understand what is going to be the key triggers
25 that help the consumer shop and buy your category more

1 frequently or put more in the basket. There's a series of
2 steps you follow to develop a strategy for your category.

3 Q And so this letter here, September 8, is from the New
4 England Consulting Group, David Stone to you saying, it was
5 great to speak to you again and have an opportunity to catch up
6 with each other. So had you known Mr. Stone previously?

7 A I have.

8 Q In what way?

9 A Dave Stone and his partner Gary, I can't remember his last
10 name.

11 Q Stiple?

12 A It's close. They helped us with a branding decision back
13 in '97, '98 when we decided to launch another brand of greeting
14 cards called Expressions from Hallmark to Wal-Mart. So we had
15 worked with Gary and Dave during that process and had a good
16 working relationship with Dave. So I called him up, asked him
17 if he would be interested in talking to us about it and he was.
18 And he met with us. This is the letter he sent me in return.

19 Q So this letter is being sent after you have the meeting
20 with him?

21 A Yep. Well, can I read the rest of the letter. I can't
22 remember if it's before he came or after he came. I thought it
23 was after he had already been with me.

24 Q Okay. So the second paragraph says, if you can blow that
25 up, Jeff, 541, page 8.

1 From your brief overview it appears you all have made
2 good progress recently in building momentum in market share
3 however despite this performance you also made it very clear
4 you and management are dissatisfied with the overall health and
5 growth of the category and are currently in the process of
6 rethinking your customer management and go to market
7 organization processes to accelerate long term profitable
8 growth. Do you see that?

9 A I do.

10 Q That's what came out of your discussions with him to
11 engage in this new consulting arrangement, correct?

12 A No. That's the letter Dave wrote me. That's not the
13 conversation we had.

14 Q So he misunderstood the conversation?

15 A Yes. He was, Dave is like a lot of consultants. He comes
16 in and hears one thing and tries to talk you into doing a lot
17 of other stuff.

18 Q So let's look at the next page, page 9. Before we get to
19 that. Let me ask you, had you just had that one consulting
20 arrangement with him in 1997 or had he worked with Hallmark
21 more than that?

22 A I only worked with Dave and Gary during that assignment.

23 Q Do you know whether they worked with Hallmark, with other
24 people within Hallmark other than yourself?

25 A I don't think so but I don't know.

1 Q Where it says, understanding the project. Bring up the
2 last 2 bullets there.

3 It says, conversely new competitive channels as the
4 Dollar Stores have emerged and grown complicating the
5 traditional competitive frame and consumer value propositions.
6 Do you see that?

7 A Yes.

8 Q That's what you were describing earlier, right, the Dollar
9 Stores were growing in the UK and in Canada and you saw it as a
10 precursor to coming down to the United States, correct?

11 A Yes.

12 Q And now he's saying in this conversation with you that has
13 now started to emerge and it's complicating the traditional
14 competitive frame work, correct?

15 A It's Dave's assessment of it.

16 Q Okay. And Dave is a consultant with a consulting group
17 that Hallmark has used previously, right?

18 A He's a partner up there.

19 Q The last bullet says, further while Hallmark has
20 maintained solid relationships with its customers the company
21 believes that it is now essential to re-energize and
22 re-structure these relationships to provide a new and broader
23 platform for future category customer and brand growth? Do you
24 see that?

25 A Yes.

1 Q Do you see that's what the company's needs were in
2 September of 2004?

3 A No. That's what Dave wrote in his letter.

4 Q So he misunderstood his conversation with you?

5 A He missed the mark and Dave didn't get the assignment.
6 And I called Dave up and said, Dave, I'm asking for help with
7 the category management. You're trying to do something very
8 different here. And we didn't hire Dave.

9 Q Okay. And then under objectives in the next bullet down.
10 It says, the overall objective of the project will be to build
11 next generation category management skills and processes to
12 drive long term category growth and to increase share of
13 category sales and profits for Hallmark retailers. Did he
14 misunderstand that as well or is that what the objective was?

15 A That would not have been what I would have written but he
16 was trying to get there with this statement.

17 Q And then down in the next bullet --

18 Blow that up, Jeff. Second single line.

19 That one says, improve the alignment of marketing and
20 retail customers business strategies to increase brand Hallmark
21 relevance. Do you see that?

22 A I do.

23 Q That's a very different concept than raising a whole
24 category, isn't it?

25 A Yes.

1 Q Was that part of the objectives that Hallmark had at that
2 point?

3 A No.

4 Q So he misunderstood that as well?

5 A Yes.

6 Q Then if we could go to the last bullet on that page. It
7 says, development and testing of break out directions and
8 strategies to drive total category growth. What about that?
9 Did he get that right or did he misunderstand that?

10 A Dave wasn't an expert in category management. Dave's a
11 very good consultant but I could tell from this letter and
12 follow-up conversation with Dave, even though he was there he
13 wasn't the right person for this work. He did not understand
14 category management. I felt like this letter and Dave's
15 approach was to come in, get involved in the business and pitch
16 the things they're good at doing. And these are things that
17 Dave and his team are good at doing. But it wasn't the work I
18 needed done and I didn't hire him.

19 Q And he's good at doing, this is what he does. He's a
20 consultant in the marketing area, right?

21 A I think Dave and Gary are consultants in anything you'll
22 pay them to do.

23 Q If you look at the next page. Under experience, first
24 sentence under experience there, it says, background NECGS has
25 previously conducted several successfully assignments with the

1 Hallmark organization and the following summarizes the scope of
2 our capabilities. Goes on to talk about their experiences. So
3 they had worked on several projects with Hallmark?

4 A Not that I'm aware of. I'm only aware of one.

5 Q Were you aware that they had worked on projects for
6 American Greetings?

7 A I don't remember. I wasn't aware or I've forgotten.

8 Q Did you ever ask the consulting group if they had done
9 work for American Greetings?

10 A I would have had to ask but I don't remember.

11 Q Why would you have had to ask?

12 A It would be just kind of a first question you ask, have
13 you worked with our number 1 competitor before?

14 Q And the answer?

15 A If they worked with our number 1 competitor, they wouldn't
16 have been at the top of my list.

17 Q But, in fact, you wouldn't have ruled them out, would you?

18 A I wouldn't have ruled them out but they would not have
19 been at the top of my list. There would have been other people
20 with similar or better capabilities that I didn't have to worry
21 about that.

22 Q But Hallmark, in fact, had hired them at one point, you
23 said back in 1997. Do you know then whether they had worked
24 for American Greetings?

25 A No, I do not.

1 Q Did you ask them?

2 A I don't remember.

3 Q It's common, isn't it, that consultants are going to work
4 for competitors in industries?

5 A I think it's common for some competitors, not for others.

6 MR. DONOVAN: Can we pull up D1016?

7 THE COURT: What is the number again, Mr. Donovan?

8 MR. DONOVAN: 1016.

9 BY MR. DONOVAN:

10 Q I placed a hard copy there for you, if you could flip
11 through that and let me know, I don't think you've seen this,
12 but does that look like the type of Power Point that you or
13 someone that hires or vets consultants gets from consulting
14 companies?

15 A I'm sorry. Ask the question again?

16 Q Sure. The title page says this is a document of New
17 England Consulting Group making a pitch to RPG in July of 2006.

18 A Okay.

19 MR. GERMAN: Your Honor?

20 BY MR. DONOVAN:

21 Q Are you familiar with this type of document?

22 MR. GERMAN: This is not a stipulated exhibit. It
23 should not be displayed until --

24 THE COURT: Take the exhibit down, please.

25

1 BY MR. DONOVAN:

2 Q Were you aware that the New England Consultant Group is
3 pitching RPG in 2006?

4 A I was not.

5 Q You weren't aware whether they had done work for American
6 Greetings or not previously?

7 A No.

8 Q When you, were you involved in signing the contracts with
9 the consultants?

10 A Yes.

11 Q Such as the Partnering Group?

12 A Yes.

13 Q When you do that there is a limited non-compete that's
14 part of that?

15 A I forget exactly what the phrasing says. There is some
16 kind of non-compete, yes.

17 Q It's limited to some specific time period, correct?

18 A I think so. I'd have to look at the agreement to be
19 certain.

20 Q After that time period they're free to go out and work
21 with any competitors of Hallmark in the market place?

22 A But they cannot share confidential information.

23 Q Excuse me?

24 A But they cannot share confidential information.

25 Q Correct. But they're free to go out --

1 A Sure.

2 Q If you hire a consultant that's worked for a competitor in
3 the industry, is that an issue for you?

4 A Ask that again.

5 Q Sure. If you're interviewing someone who is a consultant
6 that's done work in the greeting card industry for other
7 greeting card companies, is that a problem for you or for
8 Hallmark?

9 A I would not put them at the top of my list. I would try
10 to find somebody who had not worked in the industry before.

11 Q Why is that?

12 A I would just rather have someone I didn't have to deal
13 with any confidentiality issues or anything of that. Just hire
14 somebody who is fresh in the business.

15 Q Were you involved in hiring, in the hiring of Monitor for
16 the BMR project?

17 A No.

18 Q But you indicated earlier that you worked extensively with
19 a series of Monitor employees, correct?

20 A Yes.

21 Q Elise Martin, Romney Resney, Stacy Raiche, Mark Pocharski.
22 And you had indicated that you worked with them almost every
23 day, is that right?

24 A Yes.

25 Q I think you said including weekends?

1 A Yes.

2 Q It was busy?

3 A Yes.

4 Q When you say you worked with them they were here in Kansas
5 City?

6 A Yes.

7 Q Monitor is based back east, correct?

8 A Yes.

9 Q So were they set up in offices within Hallmark's offices?

10 A Yes.

11 Q Was that in the area that you were in, physically, I'm
12 saying?

13 A We spent so much time in the conference rooms together,
14 I've kind of forgot where their offices were because most of
15 day we were sitting in the conference rooms with the laptops
16 out and Power Points and all that kind of stuff but they had
17 offices at Hallmark.

18 Q And so when you say you worked with them every day you're
19 talking about person to person, not over the telephone?

20 A Most weeks they were here three or four days a week.

21 Q In the offices within Hallmark?

22 A Yes.

23 Q And were they working, to your understanding, exclusively
24 on the BMR project at that point?

25 A Yes.

1 Q So they didn't have other projects for other clients of
2 Monitor?

3 A I don't know that. They probably had other clients but
4 while they were here they were working on Hallmark.

5 Q They were here you're saying almost every day including
6 weekends, right?

7 A No. They were here usually Monday through Thursday and
8 then when they were back in Boston I talked to them on Fridays.
9 I talked to them on Saturdays. I talked to them on Sundays.
10 Had to put a fax machine in my home so I could get the decks on
11 the weekend so we could look at them over the weekend and be
12 ready for meetings on Monday morning.

13 Q What meetings?

14 A It was the work, moving all the work that you saw in the
15 OEC presentation, it was all the work that led up to those
16 summary presentations.

17 Q Well, I've seen OECs, right? We've seen some OEC
18 presentations?

19 A Yes.

20 Q I've seen other ones called NAMT?

21 A Yes.

22 Q That's North American Management Team. Is that what that
23 is?

24 A Yes.

25 Q And so there was a series of meetings of that group that

1 had to do with the BMR, correct?

2 A I don't know. That sounds right but I don't know.

3 Q And what about what I've seen referred to as 10th Floor
4 Meetings. Does that sound familiar to you?

5 A That's a location where they would meet.

6 Q Who is, is there a certain level of individuals that are
7 on the 10th floor? Why it's called a 10th floor meeting or is
8 it just there is a conference room on the 10th floor?

9 A The 10th floor is a more casual atmosphere. Sometimes the
10 NAMT would meet on the 10th floor.

11 Q And the five presentations that we talked about here today
12 and those are all solely within the greetings module within the
13 BMR, correct?

14 A Yes.

15 Q Defendant's Exhibit 1251, Jeff. If you could blow that
16 up.

17 Now, this is a document 2001, 2002 Business Modeling
18 project. Project documents. Hallmark Greetings. Do you see
19 that?

20 A Yes sir.

21 Q This represents a lot of the presentations that were done
22 by Monitor as part of the greetings module within the BMR,
23 correct?

24 A I don't know who was doing the presentations. It doesn't
25 say. It's a schedule.

1 Q Have you seen this document before?

2 A I've seen a lot of documents, looks familiar. I don't
3 know if I've seen this exact document or not.

4 Q Defendant's Exhibit 262. Place that on there. See if
5 that looks familiar to you. Let me ask the question first,
6 were you part of the OEC?

7 A I presented to the OEC. I wasn't a member of the OEC.

8 Q You presented to the OEC. Was Monitor part of those
9 presentations to the OEC?

10 A I think they were there for some of them. I don't know if
11 they were there for all of them.

12 Q This document has at the bottom there Hallmark and Monitor
13 Group, June 2002. Do you see that?

14 A I do.

15 Q And if you look at the second page. Now, this lists OEC
16 meeting documents. It lists five dates of OEC meetings. Do
17 you see that?

18 A I do.

19 Q And they'd be August 30th and December 12th were two of
20 the five presentations, correct?

21 A Yes.

22 Q And then there was also a meeting on October 11, 2001. A
23 meeting on February 6, 2002. And a meeting on March 6, 2002.
24 Do you see that?

25 A I do.

1 Q Were you aware of any other meetings of the OEC with
2 respect to the greetings portion of the BMR?

3 A I'm not.

4 Q Did you participate in all five of these meetings?

5 A No.

6 Q Do you know which ones you did?

7 A August and December.

8 Q You didn't participate in any of the others?

9 A I don't think so. It's ten years ago.

10 Q Actually, Jeff, if you could go to page 197.

11 That's the February 6, 2002 cover page. These are
12 sizable presentations, correct? But I'm not going to go
13 through it but that's the February 6 one and that shows Monitor
14 Group preparing it, OEC meeting and these were actual physical
15 meetings at Hallmark, correct?

16 A The slide says Monitor Group, yes.

17 Q The date of the meeting, that's when the meeting is held?

18 A Looks like it, yes.

19 Q Then, Jeff, if you could go to page 243.

20 Again, now, this is the Business Model Initiative
21 update. It's within this package of the OEC documents, and
22 it's March 6, 2002, document with the Monitor Group legend on
23 it. You didn't attend that meeting, did you?

24 A No.

25 Q I've placed in front of you what has been marked

1 Defendant's 264. This is the NAMT, North American Management
2 Team, that we mentioned earlier, right?

3 A Yes.

4 Q You said you were involved in some presentations to that
5 group. I'm sorry, was that OEC?

6 A OEC.

7 Q Okay. NAMT, were you involved in any presentations to
8 them?

9 A I don't remember.

10 Q Okay.

11 A We had, just to clarify, at the time we were doing the
12 Business Model Redesign work we were also running the business.
13 So you're asking me did I ever go to the NAMT and make
14 presentations, yes, but it was about other topics.

15 Q I'm sorry if I wasn't clear. I'm talking about this
16 package right here says Hallmark Greetings Business Model
17 Project, NAMT documents. You understand this to be a work
18 product from the BMR project, correct?

19 A It has information from the BMR project, yes.

20 Q And the second page lists out there the dates of the
21 meetings spanning from October 2001 to May 31, 2002. Right?

22 A Yes.

23 Q Can you identify any meetings there that you participated
24 in?

25 A I cannot.

1 Q Was Monitor involved in preparation of the materials for
2 these various meetings?

3 A I don't know.

4 Q Jeff, if you could pull up Exhibit 264, pull up page 19.

5 And, again, this has a cover page prepared by Monitor
6 Group, correct?

7 A It has a Monitor cover page.

8 Q Monitor Group, right?

9 A Right.

10 Q If you go to the next page, Jeff. Blow up the footer
11 there.

12 Did you know that Monitor coded its documents?

13 A I do.

14 Q Do you recognize WYC as meaning Hallmark?

15 A I did.

16 Q If you blow up the footer on the right.

17 That is showing that it's copyrighted Monitor Company
18 Group, right?

19 A Yes.

20 Q Do you have any reason to believe that's not true?

21 A No.

22 Q Pull up page 38.

23 Now, this is a February 22, 2002 one.

24 Go to the next page.

25 And, again, down at the bottom the footer has the

1 Monitor coding and the Monitor copyright. Do you have any
2 reason to believe this wasn't prepared by Monitor?

3 A I don't know who prepared the document. These are the
4 footers that identify Monitor documents. But many times we
5 would take pages from previous presentations and drop them in
6 the next presentations. So I don't know who prepared it but I
7 can read what the document footer says.

8 Q Actually before we get to that, Jeff, will you pull up
9 Defendant's Exhibit 253? Blow up the top of that?

10 This is a memo from Mark Pocharski. He's one of the
11 individuals that you worked with on the greetings BMR project,
12 right?

13 A Yes.

14 Q And he's sending that to these other individuals there who
15 are identified, Elise Martin, Romney Resney, Stacy Mann. Do
16 you see that?

17 A I do.

18 Q And it's dated Monday, May 13, 2002. It says, regarding
19 NAMT meeting notes. See that?

20 A I do.

21 Q Have you ever seen this document?

22 A I don't remember.

23 Q Okay. Jeff, can you blow up the paragraph after that.

24 There it says, here's a quick summary and suggested
25 to-dos coming out of Friday's meeting. I'm happy to discuss

1 any questions or comments. As I mentioned in my voice mail the
2 meeting was generally positive with a few notable exceptions.
3 I'll summarize by key active participant. It certainly appears
4 that he participated in a meeting in May of 2002 of the NAMT.
5 Is that fair to say?

6 A He was there or he had a conversation with someone about
7 it. I don't know if he was there.

8 Q Then blow up the first page below that.

9 Is Don Fletcher part of the NAMT?

10 A He is.

11 Q He says clearly trying to keep things moving, declared
12 right level discussion on both suites, in greetings, gift
13 integration, no need to return to the NAMT. It goes on and on.
14 It's a summary of the meeting. Do you see that?

15 A Yes.

16 Q Now, let's take Defendant's 265. Actually, I'm sorry, go
17 to the second page of that same document before we move on.
18 About halfway down the middle there, blow that up.

19 To-dos, Mark, Steve and Sammer. Those are three of
20 the recipients of this memo. Follow-up with John, Lisa
21 regarding Pauker and decision rights around creative working
22 with Steve Levin and Sammer. Want to insure equitable
23 treatment. These are two new items for Monitor people,
24 correct?

25 A Yes.

1 Q Then blow up the last two.

2 Here's two to-do items for Sammer, right? Did you
3 ever work with Sammer?

4 A No.

5 Q And then pull up the next page, Jeff.

6 Those are the rest of the ones for Sammer. The next
7 person. Now, Elise and Romney, those are two people you worked
8 with, right?

9 A Yes.

10 Q These are two items for them to do in May of 2002?

11 A Looks like it, yes.

12 Q Next one down. Stacey, you worked with Stacy Raiche,
13 right?

14 A Right.

15 Q On the greetings module?

16 A Yes.

17 Q These are to-do items for her in May of 2002 from Mark
18 Pocharski, correct?

19 A Yes.

20 Q Mark Pocharski was someone that would distribute work to
21 these people, right?

22 A Yes.

23 Q The Elises and the Staceys?

24 A Yes.

25 Q That's what this memo is doing, correct?

1 A Yes.

2 Q That's in May of 2002?

3 A Yes.

4 Q Take a look now at Defendant's Exhibit 265. Now, this one
5 looks like the same cover page, right? Hallmark Greetings,
6 Business Model Project. Tenth floor documents. That's what we
7 talked about the 10th floor?

8 A Yes.

9 Q And then the second page there has 1, 2, 3, 4, 5 meetings.
10 Did you participate in any of those meetings?

11 A I don't remember if I did or not.

12 Q Flip to the 4th page. January 2002. The next page.

13 So now here, again, we have the same footer. It's
14 Monitor. We have the decisions before us, consumers,
15 customers, configuration. Invest to grow the category. That's
16 what we've been talking about, right?

17 A Yes.

18 Q 45 and older activate the target equity program. These
19 are all talking about the business model, right?

20 A Yes.

21 Q These documents went through May of 2002, isn't that
22 right?

23 A Yes.

24 Q It was June when we looked earlier at --

25 Actually, Jeff, pull up 578.

1 That was the one we looked at the consumers, that was
2 one of the final documents for the BMR, right, on the greetings
3 section?

4 A Ask the question, again, please.

5 Q Sure. That document, looked at it earlier on direct with
6 Mr. German. This document here?

7 A I didn't look at it.

8 Q So let's take a look at it then. Actually going to give
9 you-- actually placed before you two documents 578 and 579.

10 So let's take 579 first.

11 Pull that up, Jeff, 579.

12 This one, again, Hallmark Greetings. Business model
13 project. Then it has configuration on it. That was part of
14 the greetings module, correct?

15 A Yes.

16 Q This has a date of June 2002. Look at page 2. That's
17 saying there, final recommendations then exhibits to that final
18 recommendations. Is that your memory that concluded on or
19 about June 2002?

20 A I wasn't there for this presentation.

21 Q Okay. Then let's take the other one, Defendant's Exhibit
22 578. And that one says Hallmark Greetings, business model
23 project. Consumers and customers. See that one?

24 A I do.

25 Q Do you recall this document?

1 A No.

2 Q Look at the next page. That has final recommendation.

3 Then consumer exhibits and customer exhibits. Were you at this
4 meeting?

5 A No.

6 Q Had you pulled off of the BMR project at some point
7 time-wise in the 2001-2002 time period?

8 A No. When the strategy work was done in December we had
9 wrapped up what we wanted to do. We went into the
10 implementation phase. So I started an assignment that was part
11 of the implementation of the business model process.

12 Q Along with your regular duties that you were doing?

13 A No. I started a new assignment.

14 Q I'm sorry?

15 A I started a new assignment.

16 Q Okay. When was that?

17 A First part of 2002.

18 Q First part of 2002. What was the new assignment?

19 A Vice president of customer strategy and planning.

20 Q And did you continue to work with the Monitor consultants,
21 Ms. Martin and Ms. Raiche and Mr. Pocharski and so on?

22 A I worked with mainly Elise Martin. But it wasn't on the
23 strategy work. It was on implementation work. It was going
24 back and asking Elise some clarification questions as we got
25 into staffing, actually putting the business model in practice.

1 It was clarification questions and that kind of stuff. Thirty
2 minutes here and there early part of 2002.

3 Q I'm moving to a new section.

4 THE COURT: Let's stop.

5 Ladies and gentleman, I'm going to read Instruction
6 No. 7 to you again. During this recess and every other recess
7 do not discuss this case among yourselves or with anyone else
8 including your family and friends. Do not allow anyone to
9 discuss the case with you or within your hearing. Do not
10 discuss also means do not e-mail, send text messages, blog or
11 engage in any other form of written, oral or electronic
12 communication as I instructed you before. Do not read any
13 newspapers or other written account, watch any televised
14 account or listen to any radio news program on the subject of
15 this trial. Do not conduct any independent Internet research
16 or consult with any other sources about this case, people
17 involved in the case or its general subject matter. You must
18 keep your mind open and free of outside information. Only in
19 this way will be you be able to decide the case fairly based
20 solely on the evidence and my instructions on the law. If you
21 decide this case on anything else you will have done an
22 injustice. It is very important that you follow these
23 instructions. And, again, I may not repeat this instruction
24 before every recess but please keep it in mind throughout the
25 trial.

